No. 771 SUPREME COURT. U. S.

No. 15393

FILED
FEB 26 1958
JOHN T. FEY, Clerk

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

DAVID DIAMOND, etc., and FREEDA DIAMOND, etc.,

Appellees.

Transcript of Record

Appeals from the United States District Court for the Southern District of California, Central Division

FILED
MAR 19 1957
PAUL P. O'BRIEN, CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—3-14-57

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States District Court, Southern District of California, Central Division

No. 17412 Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID DIAMOND, also known as DAVID DUMANUS, DAVID THORNSON, and ABE SLATER,

Defendant.

COMPLAINT TO REVOKE AND SET ASIDE ORDER ADMITTING TO CITIZENSHIP AND TO CANCEL CERTIFICATE OF NATURALIZATION

Plaintiff, United States of America, alleges:

First Cause of Action

I.

Plaintiff is a sovereign power and this action is brought pursuant to the direction of the Attorney General of the United States and under the provisions of Section 340 of the Immigration and Nationality Act of 1952 [8 U.S.C.A. §1451].

II.

The last known place of residence of the defendant is 2803½ Dobinson Street, Los Angeles, California, within the Central Division of the Southern District of California, and within the jurisdiction of this Court.

III.

The defendant, David Diamond, also known as David Dumanus, David Thornson, and Abe Slater, filed a Petition for Naturalization in the United [2] States District Court at Los Angeles, California, on October 7, 1943, and in his Petition, defendant included a request that his name be changed to David Diamond. Defendant was admitted to citizenship by Order of the aforementioned Court on November 12, 1943, receiving certificate of naturalization No. 5850343 in the name of David Diamond.

IV.

The naturalization of defendant was procured by concealment of material facts in that defendant, in the proceedings which led to his naturalization, deliberately and intentionally concealed facts relating to his membership in the Communist Party of the United States, and relating to other names by which he had been known, and relating to his intentions at the time of filing his Petition for Naturalization, as is more particularly set forth in paragraphs VI and VII below, all of which facts were material to his naturalization.

V.

The naturalization of defendant was procured by wilful misrepresentation in that defendant, in the proceedings which led to his naturalization, deliberately and intentionally made false statements concerning his organizational membership and concerning other names by which he had been known, and concerning his intentions at the time of filing his

Petition for Naturalization, as is more particularly set forth in paragraphs VI and VII below, all of which statements were material to his naturalization.

VI.

In the proceedings which led to his naturalization, defendant made the following statements, to-wit:

(1) On December 23, 1940, when registering as an alien pursuant to the Alien Registration Act of 1940, defendant made the following statements under oath:

"1(a) My name is David Diamond.

(b) I entered the United States under the name of David Dumanus. [3]

(c) I have also been known by the following names (include maiden name if a married woman, professional names, nicknames, and aliases): same"; or statements to that effect.

* * * * *

"10. I am, or have been within the past 5 years, or intend to be engaged in the following activities; In addition to other information, list memberships or activities in clubs, organizations or societies. Member of International Workers' Order IWO"; or words to that effect.

* * * * *

"15. Within the past 5 years I have not been affiliated with or active in (a member of, official of, a worker for) organizations devoted in whole or in part to influencing or furthering the political

activities, public relations, or public policy of a foreign government."; or words to that effect.

(2) On October 17, 1942, when testifying before naturalization examiners and also in his Petition for Naturalization, defendant alleged under oath:

(a) That he had never used or been known by any names other than those of David Diamond and David Dumenis.

(b) That it was his intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance to any foreign prince, potentate, State, or sovereignty of whom or which he was a subject or citizen.

(c) That he was not, and had not been for the period of at least ten years immediately preceding the date of his petition, a believer in the unlawful damage, injury, or destruction of property, or sabotage, nor a disbeliever [4] in or opposed to organized government, nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government; that he was and had been attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

VII.

All of the statements and allegations of defendant set forth in paragraph VI above were false and untrue in that, among other things:

(1) At all times since 1922, defendant has been an active member of the Communist Party of the United States.

(2) Prior to the filing of defendant's Petition for Naturalization, defendant had also used and been known by the names of David Thornson and Abe Slater.

(3) As defendant well knew, the Communist Party of the United States was an organization which, at all times since 1922:

(a) Advised, advocated, or taught the overthrow by force or violence of the government of the United States;

(b) Advised, advocated, or taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

(c) Advised, advocated, or taught the unlawful damage, injury, or destruction of property;

(d) Advised, advocated, or taught sabotage;

(e) Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised, advocated, or taught the performance of [5] the acts described in subparagraphs immediately preceding, (a), (b), (c), and (d)

(f) Promoted, influenced, and advanced the political activities, public relations, and public policy of the Union of Soviet Socialist Republics.

(4) That at all of the times above mentioned, as said defendant well knew, the Communist Party

of the United States was a section of an international organization, whose principal officers were citizens and officials of the Union of Soviet Socialist Republics; that decisions made by such organization were binding upon other Communist parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

(5) Defendant was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States during the period required by law inasmuch as he had been a member of the Communist Party of the United States, an organization which, to his knowledge, had engaged in activities as set forth in subparagraph VII (3).

(6) Defendant did not intend in good faith to support the Constitution of the United States, to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign state or sovereignty, and to bear true faith and allegiance to the United States, inasmuch as he intended to and did retain allegiance to the Union of Soviet Socialist Republics.

VIII.

Defendant deliberately and intentionally made false statements in the proceedings leading to his naturalization as set forth in the preceding subparagraphs in order to prevent the making of a full and proper investigation of his qualifications for citizenship; to induce the Immigration and Nat-

uralization Service to make an unconditional recommendation to the court that his petition be granted; to preclude inquiry by the court concerning his qualifications for citizenship; and to procure naturalization in violation of law. [6]

IX.

Good cause exists for institution of a suit under Section 340(a) of the Immigration and Nationality Act [8 U.S.C.A. 1451(a)] to set aside and cancel the naturalization of defendant as having been procured by concealment of material facts and by wilful misrepresentation.

Second Cause of Action

I.

Plaintiff is a sovereign power and this action is brought pursuant to the direction of the Attorney General of the United States and under the provisions of Section 338(a) of the Nationality Act of 1940 [formerly 8 U.S.C.A. 738(a)] as continued in force and effect by Section 405(a) of the Immigration and Nationality Act of 1952, 66 Stat. 280.

II.

Plaintiff repeats and realleges as part of this cause of action each and all of the allegations contained in Paragraphs II and III of its First Cause of Action and makes them a part hereof with like effect as if the same were set forth herein in full, and further alleges:

III.

The Naturalization of defendant was illegally procured in that his naturalization was prohibited

by Section 305 of the Nationality Act of 1940 (8 U.S.C.A. 705), since he had been a member of the Communist Party of the United States within the period of ten years immediately preceding the filing of his Petition, such organization having engaged in activities proscribed by said statute.

IV.

At all times since 1922, defendant has been an active member of the Communist Party of the United States.

V.

Good cause exists for the institution of a suit under Section 338(a) of the Nationality Act of 1940 [formerly 8 U.S.C.A. 738(a)], as continued [7] in force and effect by Section 405(a) of the Immigration and Nationality Act, 66 Stat. 280, to set aside and cancel the naturalization of defendant, as having been illegally procured.

Wherefore, plaintiff prays that:

1. The Order of the United States District Court at Los Angeles, California, of November 12, 1943, admitting defendant to citizenship be revoked and set aside;

2. All official documents evidencing citizenship issued to defendant by virtue of the aforesaid Order, and particularly the original Certificate of Naturalization No. 5850343 be cancelled and declared null and void;

3. Defendant be forever restrained and enjoined from setting up or claiming any rights, privileges

or advantages whatsoever under said Order or under any official document evidencing citizenship issued by virtue of the aforesaid Order;

4. Plaintiff have such other relief as this Honorable Court may deem just and proper in the premises.

LAUGHLIN E. WATERS,
United States Attorney
MAX F. DEUTZ,
Assistant U. S. Attorney, Chief of Civil Division
/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney
Attorneys for Plaintiff [8]

[Endorsed]: Filed November 1, 1954.

In the United States District Court, Southern District of California, Central Division

No. 17413 Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FREEDA DIAMOND, also known as FRIEDA DIAMOND, FLORENCE SLATER, FREIDA SLATER and FREDA SLATER,

Defendant.

COMPLAINT TO REVOKE AND SET ASIDE ORDER ADMITTING TO CITIZENSHIP AND TO CANCEL CERTIFICATE OF NATURALIZATION

Plaintiff, United States of America, alleges:

First Cause of Action

I.

Plaintiff is a sovereign power and this action is brought pursuant to the direction of the Attorney General of the United States and under the provisions of Section 340 of the Immigration and Nationality Act of 1952 [8 U.S.C.A. §1451].

II.

The last known place of residence of the defendant is 2803½ Dobinson Street, Los Angeles, California, within the Central Division of the Southern District of California, and within the jurisdiction of this Court.

III.

The defendant, Freeda Diamond, also known as Frieda Diamond, Florence Slater, Freida Slater, and Freda Slater, filed a Petition for Naturalization in the United States District Court at Los Angeles, California, on January 17, 1944, [9] and was admitted to citizenship by order of the aforementioned Court on May 12, 1944, receiving naturalization certificate No. 6177029.

IV.

The naturalization of defendant was procured by concealment of material facts in that defendant, in the proceedings which led to her naturalization, deliberately and intentionally concealed facts relating to her membership in the Communist Party of the United States, and relating to other names by

which she had been known, and relating to her intentions at the time of filing her Petition for Naturalization, as is more particularly set forth in paragraphs VI and VII below, all of which facts were material to her naturalization.

V.

The naturalization of defendant was procured by wilful misrepresentation in that defendant, in the proceedings which led to her naturalization, deliberately and intentionally made false statements concerning her organizational membership and concerning other names by which she had been known, and concerning her intentions at the time of filing her Petition for Naturalization, as is more particularly set forth in paragraphs VI and VII below, all of which were material to her naturalization.

VI.

In the proceedings which led to her naturalization, defendant made the following statements, to-wit:

(1) On December 23, 1940, when registering as an alien pursuant to the Alien Registration Act of 1940, defendant made the following statements under oath:

"1.(a) My name is Freeda Diamond.

(b) I entered the United States under the name of Freeda Shlomowitz.

(c) I have also been known by the following names (include maiden name if a married woman, professional names, nicknames, and aliases): (blank).", or statements to that effect. [10]

* * * * *

"10. I am, or have been within the past 5 years, or intend to be engaged in the following activities: In addition to other information, list memberships or activities in clubs, organizations or societies. Singing Chorus International Workers Order.", or words to that effect.

* * * * *

"15. Within the past 5 years I (blank) been affiliated with or active in (a member of, official of, a worker for) organizations, devoted in whole or in part to influencing or furthering the political activities, public relations, or public policy of a foreign government. No.", or words to that effect.

(2) On January 17, 1944, in testifying before naturalization examiners, defendant stated that her full, true and correct name was Freeda Diamond, nee Schlomowitz, and that she had never used or been known by any other name or names.

(3) On January 17, 1944, in testifying before naturalization examiners and executing her Petition for Naturalization, defendant alleged under oath:

"It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State or sovereignty of whom or which I am at this time a subject or citizen * * *"; or words to that effect.

"I am not, and have not been for the period of at least 10 years immediately preceding the date of this Petition * * * a believer in the unlawful damage, injury, or destruction of property, or sabo-

tage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. * * * I am, and have been [11] during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.", or words to that effect.

VII.

All of the statements and allegations of defendant as set forth in paragraph VI above were false and untrue in that, among other things:

(1) Defendant was a member of the Communist Party of the United States from 1936 through 1939 and during the year 1943.

(2) During the course of her said membership in the Communist Party, defendant used and was known by the names of Florence Slater, Freida Slater and Freda Slater.

(3) As defendant well knew, the Communist Party was an organization which, during the period of defendant's membership therein:

(a) Advised, advocated or taught the overthrow by force or violence of the government of the United States;

(b) Advised, advocated or taught the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

(c) Advised, advocated or taught the unlawful damage, injury or destruction of property;

(d) Advised, advocated or taught sabotage;

(e) Wrote, circulated, distributed, printed, published or displayed, or caused to be written, circulated, distributed, printed, published or displayed, or had in its possession for the purpose of circulation, distribution, publication, issuance or display, written and printed matter which advised, advocated or taught the performance of the acts described in the subparagraphs immediately preceding and numbered (a), (b), (c), and (d). [12]

(f) Promoted, influenced and advanced the political activities, public relations and public policy of the Union of Soviet Socialist Republics.

(4) As defendant well knew, at all of the times above mentioned, the Communist Party was a section of an international organization whose principal officers were citizens or subjects of foreign countries and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organization were binding upon other Communist Parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

(5) Defendant was not attached to the principles of the Constitution and well disposed to the good order and happiness of the United States during the period required by law inasmuch as she had been a member of the Communist Party, an organi-

zation which to her knowledge had engaged in the activities set forth in subparagraph VII (3) above.

(6) Defendant did not intend in good faith to support the Constitution of the United States, to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign state or sovereignty, and to bear true faith and allegiance to the United States, inasmuch as she intended to and did retain allegiance to the Communist International and the Union of Soviet Socialist Republics.

VIII.

Defendant deliberately and intentionally made false statements in the proceedings leading up to her naturalization, as set forth in the preceding subparagraphs, in order to prevent the making of a full and proper investigation of her qualifications for citizenship; to conceal her lack of attachment to the principles of the Constitution; to induce the Immigration and Naturalization Service to make an unconditional recommendation to the court that her petition be granted; to preclude inquiry by the court concerning her qualifications for citizenship; and to procure naturalization in violation of law.

IX.

Good cause exists for institution of a suit under Section 340(a) of the [13] Immigration and Nationality Act [8 U.S.C.A. 1451(a)] to set aside and cancel the naturalization of defendant, as having been procured by concealment of material facts and by wilful misrepresentation.

Second Cause of Action

I.

Plaintiff is a sovereign power, and this action is brought pursuant to the direction of the Attorney General of the United States and under the provisions of Section 338(a) of the Nationality Act of 1940 [formerly 8 U.S.C.A. 738(a)] as continued in force and effect by Section 405(a) of the Immigration and Nationality Act of 1952, 66 Stat. 280.

II.

Plaintiff repeats and realleges as part of this cause of action each and all of the allegations contained in paragraphs II and III of its First Cause of Action and makes them a part hereof with like effect as if the same were set forth in full, and further alleges:

III.

The naturalization of defendant was illegally procured in that her naturalization was prohibited by Section 305 of the Nationality Act of 1940 [8 U.S.C.A. §705], since she had been a member of the Communist Party of the United States within the period of ten years immediately preceding the filing of her Petition, such organization having engaged in activities proscribed by said statute.

IV.

Defendant was a member of the Communist Party of the United States from 1936 through 1939 and during the year 1943.

V.

Good cause exists for the institution of a suit under Section 338(a) of the Nationality Act of 1940 [formerly 8 U.S.C.A. 738(a)], as continued in force and effect by Section 405(a) of the Immigration and Nationality Act, 66 Stat. 280, to set aside and cancel the naturalization of defendant as having been illegally procured. [14]

Wherefore, plaintiff prays that:

1. The Order of the United States District Court at Los Angeles, California, of May 12, 1944, admitting defendant to citizenship be revoked and set aside;

2. All official documents evidencing citizenship issued to defendant by virtue of the aforesaid Order, and particularly the original Certificate of Naturalization No. 6177029, be cancelled and declared null and void.

3. Defendant be forever restrained and enjoined from setting up or claiming any rights, privileges or advantages whatsoever under said Order or under any official document evidencing citizenship issued by virtue of the aforesaid Order;

4. Plaintiff have such other relief as this Honorable Court may deem just and proper in the premises.

LAUGHLIN E. WATERS,
United States Attorney

MAX F. DEUTZ,
Assistant U. S. Attorney, Chief of Civil Division

/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney
Attorneys for Plaintiff

[Endorsed]: Filed November 1, 1954.

[Title of District Court and Cause No. 17412.]

MOTION TO DISMISS COMPLAINT TO REVOKE AND SET ASIDE ORDER ADMITTING TO CITIZENSHIP AND TO CANCEL CERTIFICATE OF NATURALIZATION

The defendant, David Diamond, hereby moves that the complaint be dismissed on the following grounds:

First Cause of Action

I.

The Court does not have jurisdiction over the action in that the complaint is not supported by an affidavit showing good cause therefor in violation of Section 340(a) of the Immigration and Nationality Act of 1952 [8 U.S.C.A. Sec. 1451]. [17]

* * * * *

[Endorsed]: Filed March 1, 1955.

[Title of District Court and Cause No. 17412.]

MINUTES OF THE COURT

Date: March 21, 1955. At: Los Angeles, Calif.
Present: Hon. Ben Harrison, District Judge.

Deputy Clerk: M. E. Wire. Reporter: J. D. Ambrose.

Counsel for Plaintiff: James R. Dooley, Assistant United States Attorney.

Counsel for Defendant: Stanley Fleishman.

Proceedings: For hearing (1) motion of defendant to dismiss the complaint; (2) motion of defendant for a more definite statement of plaintiff's claim; and (3) motion of defendant to strike portions of the complaint, pursuant to motions, memo. of points and authorities, and notice of hearing, filed March 1, 1955.

Each of Attorneys Fleishman and Dooley, respectively, makes a statement.

Court makes a statement and Orders each side to file additional authorities within five days on motion of defendant to dismiss the second cause of action in the complaint; the cause then, as to said motion to stand submitted; otherwise motions (1), (2), and (3) are denied.

EDMUND L. SMITH,
Clerk

By MURRAY E. WIRE,
Deputy Clerk. [32]

[Title of District Court and Cause No. 17413.]

MOTION TO DISMISS COMPLAINT TO REVOKE AND SET ASIDE ORDER ADMITTING TO CITIZENSHIP AND TO CANCEL CERTIFICATE OF NATURALIZATION

The defendant, Freeda Diamond, hereby moves that the Complaint be dismissed on the following grounds:

First Cause of Action

I.

The Court does not have jurisdiction over this action because the Complaint is not supported by an Affidavit showing good cause therefor in violation of Section 340(a) of the Immigration and Nationality Act of 1952, 8 USCA Section 1451. [34]

* * * * *

[Endorsed]: Filed March 25, 1955.

[Title of District Court and Cause No. 17412.]

ORDER

The motion of the defendant to dismiss the second cause of action heretofore submitted is hereby granted.

Dated: This 26th day of May, 1955.

/s/ BEN HARRISON,
Judge. [52]

[Endorsed] Filed May 31, 1955.

[Title of District Court and Cause No. 17413.]

ORDER

The motion of defendant to dismiss complaint heretofore submitted is denied.

The motion of defendant for a more definite statement of plaintiff's claim is also denied.

The motion of defendant to strike from complaint portions thereof is denied, except as to those portions which apply to the Denaturalization Act of 1940, which are hereby granted.

Defendant is allowed twenty days to answer.

Dated: This 26th day of May, 1955.

/s/ BEN HARRISON,
Judge. [53]

[Endorsed]: Filed May 31, 1955.

[Title of District Court and Cause No. 17413.]

ANSWER TO COMPLAINT

Defendant for her answer to plaintiff's Complaint on file herein alleges:

I.

Answering Paragraph III, defendant admits that she was heretofore admitted to the United States citizenship. Except as expressly admitted herein, defendant denies each and every other allegation therein contained.

II.

Answering Paragraphs IV and V, defendant denies each and every allegation therein contained.

III.

Answering Paragraph VI, defendant does not have sufficient information or belief to enable her to answer said paragraph, and basing her answer upon said lack of information or belief, denies each and every allegation therein contained. [54]

IV.

Answering Paragraphs VII, VIII and IX, defendant denies each and every allegation therein contained.

And for a Second Separate Affirmative Defense, Defendant Alleges:

I.

The matters and issues contemplated in plaintiff's Complaint are res judicata because they have been heretofore determined by a court of competent jurisdiction at the time the defendant secured the decree and judgment of naturalization.

And for a Third Separate Affirmative Defense, Defendant Alleges:

I.

This Court lacks jurisdiction over this action because the Complaint is not supported by an affidavit showing good cause therefor in violation of 8 U.S.C.A. Sec. 1451.

And for a Fourth Separate Affirmative Defense, Defendant Alleges:

I.

This Court is without jurisdiction because the statute under which this Complaint is brought, 8 U.S.C.A. 1451, on its face and as applied to this defendant is unconstitutional and void in that:

a) The said statute violates the separation of powers proscribed by the Constitution of the United States in that the said statute attempts to provide for the cancellation of a decree and judgment of naturalization rendered by a court of competent jurisdiction after proceedings to which the United States of America was a party and from which no appeal was taken.

b) The said statute is an ex post facto law in that it purports to authorize cancellation of a decree of naturalization upon grounds not prescribed at the time of naturalization. [55].

c) The said statute is a bill of attainder.

d) The said statute denies defendant due process of law contrary to the guaranties of the Fifth Amendment of the United States Constitution in that it provides a ground for denaturalization not existing at the time of naturalization.

e) The statute further violates the due process clause of the United States Constitution in that the statute on its face is vague, ambiguous and uncertain and fails to provide any clear and ascertainable standard of disclosure for the guidance of petitioners, and for this petitioner in particular, in naturalization proceedings.

f) The statute on its face and as applied abridges liberty of speech, assembly and association in violation of the First Amendment to the Constitution.

And for a Fifth Separate Affirmative Defense, Defendant Alleges:

I.

Plaintiff is barred because of passage of time and laches from instituting this action because defendant is informed and believes and therefore alleges that the information alleged by plaintiff in its complaint was in the possession and known to plaintiff for more than ten years prior to the institution of this action.

And for a Sixth Separate and Affirmative Defense Defendant Alleges:

I.

The filing of the Complaint in this action is barred by the applicable statute of limitations.

And for a Seventh Separate and Affirmative Defense, Defendant Alleges:

I.

The complaint does not state a cause of action.

Wherefore, Defendant prays judgment against plaintiff as follows:

1. That plaintiff take nothing by its complaint and that said complaint be dismissed.

2. For costs of suit, and

3. For such other and further relief as to this court may seem just.

/s/ IRWIN GOSTIN,
Attorney for Defendant. [57]

Affidavit of Service by Mail Attached. [58]

[Endorsed]: Filed June 27, 1955.

[Title of District Court and Cause No. 17412.]

ANSWER TO COMPLAINT

Defendant for his answer to the first cause of action of plaintiff's complaint on file herein alleges:

I.

Answering Paragraph III, defendant admits that he was heretofore admitted to the United States citizenship. Except as expressly admitted herein, defendant denies each and every other allegation therein contained.

II.

Answering Paragraphs IV and V, defendant denies each and every allegation therein contained.

III.

Answering Paragraph VI, defendant does not have sufficient information or belief to enable him to answer said paragraph, and basing his answer upon said lack of information or belief, [59] denies each and every allegation therein contained.

IV.

Answering Paragraphs VII, VIII and IX, defendant denies each and every allegation therein contained.

And for a Second, Separate Affirmative Defense, Defendant Alleges:

I.

The matters and issues contemplated in plaintiff's complaint are res judicata because they have been heretofore determined by a court of competent jurisdiction at the time the defendant secured the decree and judgment of naturalization.

And for a Third, Separate Affirmative Defense, Defendant Alleges:

I.

This Court lacks jurisdiction over this action because the complaint is not supported by an affidavit showing good cause therefor in violation of 8 U.S.C.A. Sec. 1451.

And for a Fourth, Separate Affirmative Defense, Defendant Alleges:

I.

This Court is without jurisdiction because the statute under which this complaint is brought, 8 U.S.C.A. 1451, on its face and as applied to this defendant is unconstitutional and void in that:

(a) The said statute violates the separation of powers prescribed by the Constitution of the United States in that the said statute attempts to provide for the cancellation of a decree and judgment of naturalization rendered by a court of competent jurisdiction after proceedings to which the United States of America was a party and from which no appeal was taken. [60]

(b) The said statute is an ex post facto law in that it purports to authorize cancellation of a decree of naturalization upon grounds not prescribed at the time of naturalization.

(c) The said statute is a bill of attainder.

(d) The said statute denies defendant due process of law contrary to the guaranties of the Fifth Amendment of the United States Constitution in that it provides a ground for denaturalization not existing at the time of naturalization.

(e) The statute further violates the due process clause of the United States Constitution in that the statute on its face is vague, ambiguous and uncertain and fails to provide any clear and ascertainable standard of disclosure for the guidance of petitioners, and for this petitioner in particular, in naturalization proceedings.

(f) The statute on its face and as applied abridges liberty of speech, assembly and association in violation of the First Amendment to the Constitution.

And for a Fifth, Separate Affirmative Defense, Defendant Alleges:

I.

Plaintiff is barred because of passage of time and laches from instituting this action because defendant is informed and believes and therefore alleges that the information alleged by plaintiff in its complaint was in the possession and known to plaintiff for more than ten years prior to the institution of this action.

II.

That defendant has established a business in the community in which he resides based on his acquisition of citizenship and it would be unjust and inequitable to deprive him of citizenship and render him subject to deportation. [61]

And for a Sixth, Separate and Affirmative Defense, Defendant Alleges:

I.

The action is barred because it was not filed within five years as required by 28 F.C.A. Sec. 2462 (formerly Sec. 791).

And for a Seventh, Separate and Affirmative Defense, Defendant Alleges:

I.

The complaint does not state a cause of action.

Wherefore, defendant prays judgment against plaintiff as follows:

(1) That plaintiff take nothing by its complaint and that said complaint be dismissed.

(2) For costs of suit; and

(3) For such other and further relief as to this Court may seem just.

BROCK, EASTON & FLEISHMAN,
/s/ By ROBERT L. BROCK,
Attorneys for Defendant. [62]

Affidavit of Service by Mail Attached. [63]

[Endorsed]: Filed July 20, 1955.

[Title of District Court and Cause No. 17413.]

ANSWER TO PLAINTIFF'S REQUEST FOR ADMISSIONS

Defendant, in answer to plaintiff's request for admissions under Rule 36, heretofore filed, answers as follows:

I.

Plaintiff's first request for admissions states as follows:

"That each of the following documents exhibited with this request is genuine;

(1) Alien Registration Form 5812590, a copy of which is attached hereto as Exhibit "A";

(2) Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization, consisting of 4 pages together with a supplement, a copy of which is attached hereto as Exhibit "B";

(3) Petition for Naturalization, No. 116085 (duplicate), a copy of which is attached hereto as Exhibit "C";

(4) Receipt No. 60205 for membership book, a copy of which is attached hereto as Exhibit "D"."

In answer to plaintiff's first request for admissions, defendant admits Sub-paragraphs (1), (2) and (3) of Paragraph I. [78]

In answer to Sub-paragraph (4) of Paragraph I, defendant refuses to answer said question on the grounds of the First and Fifth Amendments.

II.

Plaintiff's second request for admissions states as follows:

"That each of the following statements is true:

(1) That the name "Freeda Diamond" appearing in writing on the reverse side of Exhibit "A" attached hereto, above the printed words "Signature of Registrant," was written by the defendant herein;

(2) That the defendant herein affixed her signature to the original of Exhibit "A" attached hereto on December 23, 1940.

(3) That the defendant herein swore to the information contained in Exhibit "A" attached hereto before a registering official;

(4) That the name "Freeda Diamond" appearing in writing on the lower right hand side of page 2 of Exhibit "B" attached hereto, above the printed words "Signature of Applicant", was written by the defendant herein;

(5) That the name "Freeda Diamond" appearing in writing on the lower left hand side of page 3 of Exhibit "B" attached hereto above the printed words "Signature of Applicant", was written by the defendant herein;

(6) That the name "Freeda Diamond" appearing in writing on the lower right hand side of page 3 of Exhibit "B" attached hereto, beside the printed word "Applicant", was written by the defendant herein;

(7) That the defendant herein wrote the name "Freeda Diamond" appearing on the lower right hand side of page 3 of Exhibit "B" attached hereto, beside the printed word "Applicant", on January 17, 1944, the date indicated below said name. [79]

(8) That the defendant herein wrote the name "Freeda Diamond" appearing on the lower right hand side of page 3 of Exhibit "B" attached hereto beside the printed word "Applicant" during naturalization proceedings relating to said defendant;

(9) That the defendant herein submitted the original of Exhibit "B" attached hereto to the Immigration and Naturalization Service, Los Angeles, California;

(10) That the name "Freeda Diamond" appearing in writing on the face of Exhibit "C" attached hereto at the lower right hand side was written by the defendant herein;

(11) That the defendant herein wrote the name "Freeda Diamond" appearing on the face of Exhibit "C" attached hereto, at the lower right hand side, during naturalization proceedings relating to said defendant;

(12) That the defendant herein swore to the truthfulness of the contents of Exhibit "C" appearing above her signature before a Deputy Clerk of the United States District Court for the Southern District of California on January 17, 1944;

(13) That the name "Florence Slater" appearing in writing on the face of Exhibit "D" attached hereto was written by the defendant herein;

(14) That the defendant herein wrote the name "Florence Slater" appearing on the face of Exhibit "D" attached hereto on January 1, 1938, the date indicated on said Exhibit.

(15) That the defendant herein was a member of the Communist Party of the United States from 1936 through 1939;

(16) That the defendant herein was a member of the Communist Party of the United States during the year 1936;

(17) That the defendant herein was a member of the Communist Party of the United States during the year 1937;

(18) That the defendant herein was a member of the Communist Party of the United States during the year 1938; [80]

(19) That the defendant herein was a member of the Communist Party of the United States during the year 1939;

(20) That the defendant herein was a member of the Communist Party of the United States during the year 1943.

In answer to plaintiff's second request for admissions, defendant admits the allegations contained in Sub-paragraphs (1), (2), (3), (4), (5), (6), (7), (8), 9), (10), (11) and (12) of Paragraph II.

In answer to Sub-paragraphs (13), (14), (15), (16), (17), (18), (19) and (20) of Paragraph II,

defendant refuses to answer on the grounds of the First and Fifth Amendments.

Dated October 27, 1955.

/s/ IRWIN GOSTIN,
Attorney for Defendant. [81]

Duly Verified.

Affidavit of Service by Mail Attached. [82]

[Endorsed]: Filed November 1, 1955.

[Title of District Court and Cause No. 17412.]

MINUTES OF THE COURT

Date: January 30, 1956. At: Los Angeles, Calif.

Present: Hon. Ben Harrison, District Judge.

Deputy Clerk: M. E. Wire. Reporter: J. D. Ambrose.

Counsel for Plaintiff: James R. Dooley, Assistant United States Attorney.

Counsel for Defendant: Robert L. Brock.

Proceedings: For hearing motion of defendant for the Court to issue a pretrial order stating the issues of fact and law to be tried, pursuant to notice and motion, filed January 20, 1956.

The Court makes a statement, and each of Attorneys Dooley and Brock, respectively, makes a statement.

It Is Ordered that said motion is denied.

Upon oral stipulation of counsel It is Ordered that this cause is consolidated for trial with cause

No. 17,413-BH Civil, U.S.A. vs. Freeda Diamond, etc.

JOHN A. CHILDRESS,
Clerk,
/s/ By MURRAY E. WIRE,
Deputy Clerk. [83]

[Title of District Court and Causes Nos. 17412 and 17413.]

MEMORANDUM OPINION

In the above consolidated actions the plaintiffs seek to set aside orders admitting them to citizenship and to cancel their certificates of naturalization under the provisions of Section 340 of the Immigration and Nationality Act of 1952. No affidavit showing good cause was filed with or prior to the institution of these actions. Each of the defendants moved to dismiss on the grounds that no affidavits were filed. The motions to dismiss were denied under the [94] authority of Schwinn vs. U.S., 112 F. 2d 74, affirmed by the Supreme Court of the United States.

At the trial, over the objection of the defendants, the court admitted affidavits purporting to show good cause. Before the trial was completed, on April 30, 1956, the Supreme Court handed down its long awaited opinion in the case of U.S. vs. Zucca, 351 U.S. 91; 24 L.W. 4232. Thereupon the defendants submitted their cause to the court for decision relying entirely upon the decision in the said Zucca case.

It is now quite clear that the motion to dismiss should have been granted under the rulings of the Zucca case.

The government, among other things, contends that under the authority of U.S. vs. Frank Costello, 24 L.W. 2541, the court should recognize the affidavits filed during trial as a sufficient compliance with said Section 340, inasmuch as the Supreme Court has referred to the filing of such affidavits as procedural and not as jurisdictional.

While it appears that the Supreme Court in the Zucca case has studiously avoided reference to the affidavits of probable cause as jurisdictional, it is my view that the language of the Supreme Court in effect makes the filing of such affidavits jurisdictional to the maintenance of denaturalization proceedings. Any action instituted without the filing of an affidavit is premature and circumvents the provisions of said Section 340.

The Supreme Court in said Zucca case made itself clear when it said:

"The mere filing of a proceeding for denaturalization results in serious consequences to a defendant. Even if his citizenship is not cancelled, his reputation is tarnished and his standing in the community damaged. Congress recognized this danger and provided that a person, once admitted to American [95] citizenship, should not be subject to

legal proceedings to defend his citizenship without a preliminary showing of good cause. Such a safeguard must not be lightly regarded. We believe that, not only in some cases but in all cases, the District Attorney must, as a prerequisite to the initiation of such proceedings, file an affidavit showing good cause." (Underscoring supplied.)

There remains nothing else for me to do but to follow the clear mandate of the Supreme Court and dismiss the above actions without prejudice.

I am making no ruling as to the sufficiency of the affidavits offered in evidence during the course of the trial.

Dated: This 26th day of July, 1956.

/s/ BEN HARRISON,
Judge. [96]

[Endorsed]: Filed July 26, 1956.

In the District Court of the United States, Southern District of California, Central Division

No. 17412-BH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID DIAMOND, etc., Defendant.

No. 17413-BH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FREEDA DIAMOND, Defendant,

ORDER

In accordance with my memorandum opinion this day filed, the above entitled actions are hereby dismissed without prejudice.

Dated: This 26th day of July, 1956.

/s/ BEN HARRISON,
Judge. [97]

[Endorsed]: Docketed and Entered July 27, 1956. Filed July 26, 1956.

[Title of District Court and Cause No. 17412.]

NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Final Order entered in this action on July 27, 1956.

Dated: This 21st day of September, 1956.

LAUGHLIN E. WATERS,
United States Attorney,
MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division,
/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney,
Attorneys for Plaintiff. [98]

[Endorsed]: Filed September 21, 1956.

[Title of District Court and Cause No. 17413.]

NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Final Order entered in this action on July 27, 1956.

Dated: This 21st day of September, 1956.

LAUGHLIN E. WATERS,
United States Attorney,
MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division,

/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney,
Attorneys for Plaintiff. [99]

[Endorsed]: Filed September 21, 1956.

[Title of District Court and Causes Nos. 17412-13.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause;

A. The foregoing pages numbered 1 to 115, inclusive, containing the original

Complaints; (17412-BH and 17413-BH).

Motion and Notice of Motion to Dismiss Complaint, Motion for More Definite Statement, and Motion to Strike Portion of Complaint; (17412-BH and 17413-BH).

Order to Dismiss Second Cause of Action; (17412-BH).

Order Denying Defendant's Motion to Dismiss and Defendant's Motion for a More Definite Statement, and Motion to Strike from Complaint portions thereof is denied, except as to certain portions; (17413-BH).

Answers to Complaints; (17412-BH and 17413-BH).

Request for Admissions Under Rule 36; (17413-BH).

Answer to Plaintiff's Request for Admissions; (17413-BH).

Stipulations and Orders Thereon re Portions of Complaints; (17412-BH and 17413-BH).

Memorandum of Opinion; (17412-BH and 17413-BH).

Order Dismissing Actions; (17412-BH and 17413-BH).

Notices of Appeal; (17412-BH and 17413-BH).

Statements of Points on Appeal; (17412-BH and 17413-BH).

Orders Extending Time to Docket Appeal; (17412-BH and 17413-BH).

Designations of Record on Appeal; (17412-BH and 17413-BH).

And a full, true and correct copy of the Minutes of the Court on March 21, 1955 (17412-BH), January 30, 1956 (17412-BH), March 30, 1956 (17413-BH).

B. Three volumes of Reporter's Official Transcript of Proceedings had on February 28, 1956; February 29, 1956; March 1, 2, and May 4, 1956.

C. Plaintiff's Exhibits 1 through 47, inclusive, and Defendants' Exhibits A through H, inclusive.

I further certify that my fee for preparing the foregoing record, amounting to $1.60, has not been paid by appellant.

Witness my hand and the seal of said District Court, this 18th day of December, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk,

/s/ By CHARLES E. JONES,
Deputy.

In the United States District Court, Southern District of California, Central Division

No. 17,412-BH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID DIAMOND, also known as DAVID DUMANUS, DAVID THORNSON, and ABE SLATER,

Defendant.

No. 17413-BH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FREEDA DIAMOND, also known as FRIEDA DIAMOND, FLORENCE SLATER, FREIDA SLATER, and FREDA SLATER,

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California
February 28, 1956
10 a.m.

Honorable Ben Harrison, Judge Presiding.

Appearances: For the Plaintiff: Laughlin E. Waters, United States Attorney; by James R. Dooley, Assistant United States Attorney.

For the Defendant David Diamond, etc.: Messrs. Brock, Easton & Fleishman, by Robert L. Brock, Esq.

For the Defendant Freeda Diamond, etc.: Irwin Gostin, Esq. [3]*

The Court: You may proceed.

The Clerk: United States of America vs. David Diamond and others, case No. 17412 BH and United States of America vs. Freeda Diamond and others, case No. 17413, for trial of said two consolidated causes.

Mr. Dooley: Ready for the plaintiff, your Honor.

Mr. Brock: Ready for the defendant David Diamond.

Mr. Gostin: Ready for the defendant Freeda Diamond.

The Court: You may proceed.

Mr. Dooley: Your Honor, I note that the defendants are not in the courtroom.

The plaintiff has attempted to subpoena the defendants because the plaintiff intends to call them as adverse witnesses under Rule 43(b). And it is customary that the defendants be in the courtroom and the plaintiff would like the court to order the defendants here for the purpose of appearing under Rule 43(b), your Honor.

Mr. Brock: It is a custom of which I am totally unaware. There is no rule of law that compels the

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* Page numbers appearing at top of page of original Reporter's Transcript of Record.

defendants in a civil proceeding to be present in the courtroom, that I have ever heard of.

The Court: Where are they?

Mr. Brock: I don't know, your Honor. [5]

The Court: I am going to direct them to be here.

Mr. Brock: I can't produce them. The Government has had all sorts of time in which to subpoena them.

Mr. Dooley: Your Honor, I would like to ask opposing counsel whether the defendants are absent of their own volition.

Mr. Brock: I don't know what counsel means. I haven't got them in my custody and I don't suppose they are under arrest.

Mr. Dooley: It is their own choice of being absent.

Mr. Brock: They are not, so far as I know, dead or anything. I suppose it is.

Mr. Dooley: Your Honor, the plaintiff will proceed with its first witness.

The Court: Call your short witnesses and get them over with.

Mr. Dooley: Yes, your Honor. I will do that.

The plaintiff calls Mrs. Ernestine Tolan as its first witness.

ERNESTINE TOLAN

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Ernestine Tolan.

Mr. Dooley: Your Honor, I would like to have

(Testimony of Ernestine Tolan.)

—I would [6] like before proceeding to find out if the defendants were aware of the date of trial and when counsel for the defendants were last in contact with them.

The Court: I don't know as I can ask them that question, counsel. You have had an opportunity to subpoena them, haven't you?

Mr. Dooley: Yes, your Honor. I gave the marshal a subpoena last week, Tuesday I believe, and the marshal has been unable to execute it at their last known address, with efforts being made both day and night to do so.

The Court: Well, it may be when the time comes I will grant a continuance for that purpose and so you may subpoena them again.

Mr. Dooley: Yes, your Honor.

Direct Examination

Q. (By Mr. Dooley): Where do you reside, Mrs. Tolan?

A. 51 Green Summer Road, Pasadena, California.

Q. And what is your business or profession?

A. I am an attorney and a housewife.

Q. On October 7, 1943, what was your business or profession?

A. I was a Naturalization examiner with the Immigration and Naturalization Service, Department of Justice.

Q. And how long had you been with the Immigration and [7] Naturalization Service?

(Testimony of Ernestine Tolan.)

The Court: The court takes notice of the fact she has been connected with that service for some time.

Q. (By Mr. Dooley): And in what capacity—now, will the clerk please hand the witness Exhibits 4 and 6 for identification?

The Court: You should hand the witness your own exhibits, counsel.

Mr. Gostin: Will you identify 4 and 6 for us?

Mr. Dooley: I will do that, your Honor. I have had the clerk mark the exhibits in advance and I have a list for the court's convenience.

Mr. Brock: Do you have a list for us?

Mr. Dooley: And I have a list for opposing counsel.

Mr. Brock: Thank you very much.

The Clerk: Here are Exhibits 4 and 6 for identification.

(Documents handed to the witness.)

Q. (By Mr. Dooley): Mrs. Tolan, I will ask you to examine Exhibit 4 for identification and tell the court whether your signature appears on that document?

A. I recognize my signature appears on page—I believe you would say this is page 3 of Exhibit 4 for identification, of the Government's Exhibit 4. I recognize that as my signature made in green ink and dated.

Q. And on what date did you sign this document? [8]

(Testimony of Ernestine Tolan.)

A. The date which I inserted here also in green ink, on October 7, 1943.

Q. In what capacity did you sign Exhibit 4?

A. As a preliminary naturalization examiner for the Department of Justice.

Q. What if anything does your signature on this document indicate?

The Court: That calls for a conclusion, doesn't it, counsel?

Mr. Dooley: I will withdraw that question.

Q. (By Mr. Dooley): On October 7, 1953 what were the duties of a preliminary examiner in general?

Mr. Brock: To which I will object as being irrelevant.

The Court: I don't think so.

The Witness: The duties, the basic duties of a preliminary naturalization examiner on October 7, 1943—and you said 1953. On October 7, 1943 was to interview in a preliminary way those who were applicants for naturalization as citizens of the United States, and to go over this form, which is Government's Exhibit 4-A in detail, asking all questions that are enumerated here on this form; making any corrections which might be commensurate with the testimony then given by the applicant who was being interviewed, and giving them also the examination on government—questions on government and finding out their loyalty and attachment to the Government. [9]

To determine their moral character and making

(Testimony of Ernestine Tolan.)

a recommendation to the designated officer as to whether or not the petiiton should be granted or whether further evidence or further investigation would be necessary.

This would be a preliminary recommendation by the preliminary naturalization examiner. I think that would be the basic duties.

Q. Now, on October 7, 1943 in your examination of applicants for naturalization as a designated examiner——

A. Preliminary examiner, pardon me, counsel.

Q. Preliminary examiner. Did you have a practice with regard to placing the applicants under oath?

Mr. Gostin: To which we object, your Honor. That is irrelevant and immaterial, what the practice was.

The Court: Is the document sworn to?

Mr. Gostin: I believe it is, your Honor.

The Court: Is the document sworn to?

The Witness: The applicant was put under oath when giving this testimony and signed it that he agreed.

Mr. Dooley: Your Honor, I don't believe this particular document was under oath.

Mr. Brock: There is a statement at the bottom of it: "I certify the foregoing was read and the statement is true to the best of my knowledge and belief."

The Witness: That was not made in the presence of the [10] preliminary examiner. I mean except

(Testimony of Ernestine Tolan.)

that he also made that statement under oath before the preliminary examiner.

The Court: Did you swear him?

The Witness: Yes.

Q. (By Mr. Dooley): Now, in your examination of applicants on October 7, 1943, as a preliminary examiner, did you follow a method of questioning applicants for naturalization?

Mr. Brock: To which I will object as being irrelevant. The only thing in issue is what took place in this proceeding.

The Court: Counsel, I just finished a case where we had that very question come up and I think she can testify to the custom she followed.

Mr. Dooley: There is a case just recently down on the precise point, if the court please.

The Court: I am going to hold she may testify as to custom.

The Witness: I had an invariable and rigid custom of procedure in questioning applicants for citizenship who appeared before me.

Q. (By Mr. Dooley): And what was that procedure, Mrs. Tolan?

A. When they first appeared in the hearing room I stood and raised my right hand and administered the oath in words as follows:

"Do you solemnly swear the testimony which you [11] are about to give in this matter shall be the whole truth, so help you God?"

Mr. Brock: May it be understood—I don't mean to interrupt the witness, but may it be understood

(Testimony of Ernestine Tolan.)

that our objection will run to this whole line of questioning on the grounds heretofore stated.

The Witness: When the applicant said "I do," I then asked them to be seated.

I then took the file which I had and from the file I removed this form, which is Government's Exhibit 4-A and which we call the N-400, and commencing at the page where the statement of facts, page 3, question 1, I began asking the applicant the questions and I went right down this sheet, 1, 2, 3, 4, 5, and over on to the next page and on page 1 the question relative to absences.

I asked each of those questions and when the applicant made corrections I so indicated the corrections on the sheet in green ink. And following through the questions where a correction had been made I numbered the correction "1." I note that I did that in this instance, that I made corrections pursuant to my invariable practice on this sheet where corrections had been made, but I asked every question whether there was a correction to be made or not.

I went into detail and at times I elaborated on the question, but it was my invariable practice to ask each [12] question as here enumerated on these sheets on the N-400 on every applicant that appeared before me.

The Court: You say "made corrections." Before you received it it had been filled out?

The Witness: It had been filled out and had been signed before it came before us.

(Testimony of Ernestine Tolan.)

In fact the applicant of necessity handed this in because he had to obtain a Certificate of Arrival and the N-400 was submitted to our Service first for the purpose of indicating a desire to apply for citizenship and, secondly, for the purpose of obtaining the Certificate of Arrival proving that he was legally in the country, which was necessary before an applicant could appear for application for citizenship.

Q. (By Mr. Dooley): Now, Mrs. Tolan, you referred to handwriting in green ink on that form.

Is all of the handwriting in green ink your handwriting?

A. Yes, it certainly is. I recognize it and it was my practice——

The Court: Is it good penmanship?

The Witness: It is not, but I can read it.

Mr. Gostin: I will stipulate it is her handwriting.

Q. (By Mr. Dooley): Now, I notice, Mrs. Tolan, in item 27 of page 2 of Exhibit 4 the word "married" is inserted in green ink.

What, if anything, does this insertion mean? [13]

A. It means that the applicant when he filled this out had not put in that space the answer and in going over in detail, as was my duty and as was my inevitable practice, I asked him the question, noting that he had put in no answer previously.

I filled in the correction in order to complete the form for him according to his answer.

Q. Now, I note on item 1, page 3 of Exhibit 4

(Testimony of Ernestine Tolan.)

parentheses in green ink around the names "David Diamond" and "Dave Diamond."

What do those parentheses mean?

A. As was our practice we asked the petitioner the name under which he was born in asking him what his true and correct name—the name under which he was born and then we asked him if there were any other names that he used or had or any that he had legally obtained since the appellation that was given him at his birth and the parentheses indicate that the name "David Diamond" and "Dave Diamond" were names that he had used but which he had not legally obtained and the name which appears there not in parentheses was the name which was given him at birth and which had not been changed in a legal way since that time.

Q. Now, if the applicant had given any other names besides those shown on item 1, page 2, what would you have done? [14]

Mr. Brock: To which I will object as irrelevant and on the further ground it assumes facts not in evidence. And on the further ground it is an improper hypothetical question and has no bearing here.

The Court: I think the objection is good, counsel. In other words, as I understand, you ask him his name and the names he has used?

The Witness: Yes, any name whatsoever he ever used at any time or any place during his lifetime

(Testimony of Ernestine Tolan.)

which was to appear there and which he was to answer.

The Court: You mean the two names, Dave and David?

The Witness: Yes, that he had used David Diamond and Dave Diamond in addition to the name that he had at birth and no other names had ever been used other than that.

Mr. Brock: Do I understand the witness is now testifying that no other names were used? I didn't quite follow her.

The Witness: We asked them in this question to state all names that they had ever used at any time in their lifetime in order that the identification of this person might be clear.

They were asked to give and state at this time all names that they had ever used at any time or any place.

The Court: Mrs. Tolan, may I ask do you have any recollection of this particular applicant?

The Witness: No, sir. My recollection is based upon the procedure and practice and custom that we followed and our instructions to obtain this information in the manner in which I have disclosed. I don't remember this man in 1943.

Q. (By Mr. Dooley): Now, Mrs. Tolan, do you have a practice with respect to inserting names that an applicant would give you in addition to those which appeared on the form?

A. Yes, sir.

Q. And what was that practice?

(Testimony of Ernestine Tolan.)

A. When we asked the question as to their true name and as to all names that they had ever used at any time or any place, we saw to it that the name which they had at birth and which they then legally bore appeared as this name—I am sorry, but I can't pronounce that word, but it is spelled out here—that their full, true and correct name appeared on the sheet here in the vicinity of question 1 and if we didn't have room then to add other names that they used, we put it above in the little white space that appears above "Statement of Facts," and sometimes we put a little arrow up there but it wasn't ordinarily necessary.

This sheet, if I may say, was for the purpose of assisting the clerk in typing up the names and later for the designated officer and we saw to it that all names that were stated by the petitioner appeared on this sheet—every single name ever, [16] and that out of parentheses appeared the name that they had legally at the time they appeared before us.

Q. (By Mr. Dooley): Now, calling your attention to item 28 on page 2 of Exhibit 4, did you have a practice with regard to questioning the applicant concerning that item? A. Yes, I did.

The Court: What is that item?

Mr. Brock: "Are you a believer in anarchy or the unlawful damage or injury and destruction" and so forth.

The Court: What is 28?

The Witness: 28 relates to their affiliations.

(Testimony of Ernestine Tolan.)

The Court: What does it say?

The Witness: "Are you a believer in anarchy or the unlawful damage, injury or destruction of property or sabotage?"

Mr. Brock: I don't see anything here about affiliations.

The Witness: Pardon me.

Mr. Brock: I don't see anything in there about affiliations.

The Witness: "Do you belong to or are you——" I am sorry but this is pinned together.

Mr. Brock: Associated.

The Witness: "associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?"

Now, in addition there, sir, I had an invariable practice of saying, because we had to make clear to our petitioners what that question meant, I invariably asked them:

"Are you a member of the Fascist, Nazi or Communist Party or any other organization which would be against the Government of the United States?"

That was the elaboration of that question which I habitually used in order to clarify to the applicant the meaning of the question.

Q. (By Mr. Dooley): Now, Mrs. Tolan, I call your attention to the signature "David"—withdraw that. I am calling your attention to the signature "David Dumanus" appearing on the lower right-

(Testimony of Ernestine Tolan.)

hand side of page 3 of Exhibit 4 and ask you whether that name was signed in your presence?

A. Yes, sir. It was signed after I had inserted the number of corrections which I had made after my interview with him and the date. He then signed his name.

The Court: You might as well lean back and relax, Mrs. Tolan. That is what the doctors all tell us to do, is to relax.

Q. (By Mr. Dooley): And what was the purpose of this signing?

A. This was an acknowledgment that the corrections [18] had been made in his presence and pursuant to information which he had given the Examiner and that he acknowledged that on that date he had been interviewed to the effect of this document.

Q. Now, were you familiar with the use of the form N-400, on or about October 7, 1943, in the course of naturalization proceedings?

A. Well, it was the basis upon which the petition for citizenship would then be prepared in formal order for the court. In other words, the information that was given here was the information which would be used by our service in preparing the application for the applicant and would be the basis upon which the petition was composed, which would then be filed with the court for citizenship.

Q. Now, will you please examine, Mrs. Tolan, Plaintiff's Exhibit 6 for identification, which purports to be a petition for naturalization, No. 112600,

(Testimony of Ernestine Tolan.)

and see if your signature appears on this document?

A. Yes, sir, it does. I recognize it. It is in green ink and that is my signature.

Q. And on what date did you sign this document?

A. October 7, 1943 as I dated it there in green ink.

Q. In what capacity?

A. In my capacity as preliminary naturalization examiner. [19]

Q. Now, I note, Mrs. Tolan, that on Exhibit 6 appears "Continue" after recommendation of preliminary examiner.

For what purpose did you continue this application?

Mr. Brock: Just a minute, Mr. Dooley. I have a copy that purports to be the copy that you are using, I take it, and it has nothing like that on it. Is there a page off of mine?

Mr. Dooley: I believe you have the duplicate. I am referring to the triplicate.

Mr. Brock: You don't have a copy of that?

Mr. Dooley: No, I don't have one available.

Q. (By Mr. Dooley): Now, why did you continue the application, Mrs. Tolan?

A. Because all the necessary documents had not been submitted, as I indicated here in about the center of the sheet.

The applicant in this instance had not submitted his draft registration card. That was an abbrevia-

(Testimony of Ernestine Tolan.)

tion that we used—"D.R.C." for draft registration card.

I recommended—I don't actually continue it because that would be done by the designated officer, but I recommended a continuance be had for the reason that he had not exhibited his draft registration card, which was a requirement at that time for a person of his age who was an applicant for citizenship.

Q. Now, had there been any other reason for continuing [20] this application would you have so indicated on Plaintiff's 6 for identification?

A. That is correct. All reasons or recommendations for continuance or otherwise would have appeared on that sheet at substantially the same place that the D.R.C. in green ink now appears there.

Q. Now, if the applicant had told you that he was or had been a member of the Communist Party what, if anything, would you have done?

A. The notation with regard to his affiliations would have appeared first on Government's Exhibit 4-A and under the question—on Government's Exhibit 4 had that information been elicited from the applicant it would have appeared in memo form, as much as space allowed on Exhibit 4, under the question as it was asked, the question 28.

In addition to that a memorandum to that effect would have been made of Government's Exhibit 6, what we called "a hold" would have been put on the Government's Exhibit 6 in a similar position where the draft registration card "hold" has

(Testimony of Ernestine Tolan.)

been put indicating that this petitioner had informed the Examiner that he was a member or affiliated with a Communist organization and that would have appeared as "a hold." It would have appeared further where the notation "anarchist or subversive" appears in printed type lower on this same page of Exhibit 6. And had there been anything revealed in detail, as an examiner [21] it was my invariable practice to make a further memorandum with regard to it for the benefit of the designated officer and to recommend that the investigation section of the office should have the file for investigation and inquire into this affiliation—an inquiry into this affiliation there would have been a "continuance" for, first, investigation——

The Court: As I understand, Mrs. Tolan, by refreshing your memory from this document he did not admit that he had belonged to any organization that had as a purpose the overthrow of the Government by force and violence, is that correct?

The Witness: That is correct, sir. I can testify to that only of course by reference——

The Court: By refreshing your recollection from this form.

The Witness: Right. He did not reveal any affiliation with any organization.

Mr. Gostin: I am not clear up to this point. I assume the witness has been testifying as to her invariable practice and I understood that is still the case. That is a little different than refreshing

(Testimony of Ernestine Tolan.)

her recollection. That would mean she has present recollection now.

The Court: As I understand it, her testimony is she does not have any recollection of the particular case.

Mr. Gostin: That is right.

The Court: But that by reason of this form she does [22] recollect what transpired when she took this application.

Mr. Gostin: My understanding was that her statement as to the form merely tied it in with the invariable practice and that she was still testifying as to invariable practice.

Maybe the witness can clarify it but I understood her to still be testifying as to her invariable practice.

The Court: I understand "invariable practice" and she testified that she was following her invariable practice; and she has testified to the effect that through these documents she can tell what her practice was. But with this document I am asking whether or not she can testify of her own knowledge and whether or not by reason of this document she can have her mind refreshed.

Mr. Gostin: That is what I am getting at and do I understand the witness to answer yes?

The Court: I understood she did answer yes.

Mr. Dooley: Your Honor, I believe that the testimony of this character is based upon both invariable practice and upon past recorded recollection—the witness's handwriting and signatures and

(Testimony of Ernestine Tolan.)

marks on these documents constitute a means of past recorded recollection.

The Court: Well, as I understand it it is a double barrel shotgun.

The Witness: Yes, your Honor.

The Court: This document, because here we have a case [23] that is different from the one Miss Martin had where practically everybody was dead relative to it, and she was testifying as to the custom and practice. She also has the advantage of having her own memory refreshed as to what she did.

I understand your memory would be refreshed as to any application you took by a similar method?

The Witness: That is correct. I followed the practice and I see by my notations that I certainly followed it in this case.

The Court: Where did you get all that green ink?

Mr. Brock: I thought the Government also operated with red ink.

The Witness: We were not limited as to color. I just like green.

Mr. Dooley: No further questions.

The Court: Do you want to introduce these documents into evidence?

Mr. Dooley: Yes, your Honor. I would like to introduce Plaintiff's Exhibit 4 and Exhibit 6 for identification into evidence as Plaintiff's Exhibits 4 and 6.

Mr. Brock: There will be an objection on the

(Testimony of Ernestine Tolan.)

ground that the documents haven't been properly identified and no sufficient foundation laid.

The Court: Objections overruled. They will be admitted.

The Clerk: United States Exhibits 4 and 6 in evidence. [24]

(The documents referred to, marked Plaintiff's Exhibits 4 and 6, were received in evidence.)

The Court: You may proceed with your cross examination.

Cross Examination

Q. (By Mr. Brock): Now, Mrs. Tolan, actually what you do see on the document Exhibit 4 that you truly and really recognize is your handwriting, isn't that so? A. That is correct.

Q. And everything else you have told the court about that document is based solely on the questions in the document and on your recollection as to what your practice was, isn't it?

A. It is based upon my notations and my invariable practice in the form of questioning an applicant.

Q. And the only notations you put on there yourself are those in the green ink relating to the place where you filled in "married" on page 2 and a couple of other items that you filled in, isn't that true?

A. On page 2 I believe there are three.

Q. I thought it was page 2.

(Testimony of Ernestine Tolan.)

A. Yes, on page 2 there are three that I made, sir, I note.

Q. Now, excluding those everything else you have told the court is based upon your feeling as to what your invariable [25] practice was, isn't that true?

A. As to my knowledge, not my feeling, sir. I know that I followed an invariable practice and my recollection as to what I did in this particular instance is refreshed by the memorandums which I made as I interviewed the applicant.

Q. Mrs. Tolan, if you had an invariable practice why does it need refreshing from any document?

The Court: Isn't that argumentative, counsel?

Mr. Brock: I don't think so. I would like to find out from this witness how you can refresh any memory as to an invariable practice.

Mr. Dooley: I also object in addition to being argumentative, it calls for a conclusion of the witness.

Mr. Brock: She is the one that did it. She tells us it refreshes her recollection. I think she is trying to get around the point that truly and really all that happened in this case was that she has forgotten and she is telling the court when she examined an applicant she had a practice and she assumes she followed it in this case.

Mr. Dooley: Your Honor, I believe the argument has taken the form of legal theories.

Past recorded recollection is a legal theory that is well known in the field of law and although Mrs.

(Testimony of Ernestine Tolan.)

Tolan is an attorney at law I don't think this is the proper place to have legal discussions. [26]

The Court: Well, counsel, I might have written something 10 years ago and I might not have any recollection of the writing, but the writing itself would refresh my memory that I did write it.

Mr. Brock: I have conceded that in this case that the things she wrote is recorded recollection and she has it and there it is. The only other point I am trying to get from this witness, and I will rephrase the question:

Q. (By Mr. Brock): When you tell us about what you did in this case it is based entirely on the fact that you had an invariable practice, isn't it? A. (No answer.)

Q. Isn't that correct?

A. That is correct. I proceeded in a certain manner. If I might just comment. You know these forms change from time to time also and so my recollection is refreshed with respect to this particular form and in the character in which it appears here.

Other times while in the Service we used different forms but at this time we used this form to my recollection upon reviewing it.

Q. That is what I was trying to get at, Mrs. Tolan.

Now, you didn't have any directive from any superior authority in your organization as to the types of questions you were to ask of the specific questions, did you? [27]

(Testimony of Ernestine Tolan.)

A. Well, we were trained in the particular office where I served and I was trained and instructed by the officer who trained me in asking the questions in the form of which I have previously indicated, making the memoranda along the edge of the page as indicated and following the form in detail as I have heretofore stated.

Q. Now, that is what you really did in every case, isn't it? You took the particular form that the Government was using at that time. You sat the applicant down after swearing him and you went through that form item by item?

A. Perhaps I should have added that we were instructed to be sure that the petitioner understood each of the questions as they were asked, because we were dealing with people of various educational levels and we were also instructed to put —if they did not understand, to put it in such language as to clarify to the applicant what was meant by the question.

Take for instance the question No. 1:

"Give your full and correct name."

I have stated that we had to elaborate on that question to make it clear to every applicant that we wanted not only the name under which they were born or the name which they were then using, but that we also required as an answer to that question any other names that they had ever used at any time anywhere.

Q. But the form didn't read: "Give any names you have [28] ever used," did it?

(Testimony of Ernestine Tolan.)

A. No, sir, but the practice was to make it clear and to clarify on the sheet the full name and all or any names ever used by an applicant.

Q. You didn't use any work sheet of any kind, did you? A. Well, the work sheet——

Q. Other than these?

A. The work sheet in effect was this other form in which we made certain office memoranda for our own use which would not appear on the form.

We also had additional work sheets, sir, which you will find here attached to the N-400, which the applicant either had filled at the time they filed this petition or filed with us which brought their address up to date.

Now, this was a further amplification of N-400 and was an example of some of the applications that we from time to time used in the office in order to fill in further information that was elicited during the interview.

Q. A great deal of your precautions here were due to the fact that you were dealing with people of different linguistic background and sometimes had to be sure they understood?

A. Linguistic and educational. I mean sometimes the language wouldn't be clear to the applicant so we did state, if they appeared not to understand, the question in language that they would understand.

Q. So in order to clarify that to an applicant you explained to them that the question at the top of page 3—"My full, true and correct name," really

(Testimony of Ernestine Tolan.)

didn't mean that at all but meant all the names "I have been known as"? A. That is correct.

Mr. Dooley: I object to that on the ground, your Honor, that counsel is misquoting the form and he has done it before.

The form does ask for every name that has been used.

Mr. Brock: That is not true, Mr. Dooley. We are looking at the top of page 3, the first question. And I will ask the witness if it isn't——

Mr. Dooley: In small print it says, "and any other names which have been used must appear here."

Mr. Brock: I am sorry, that is true. It is underneath and I couldn't read it.

The Witness: I can't read it without my glasses.

Mr. Brock: I am sorry. I apparently had the same trouble.

The Court: Mine would be too old for you.

Mr. Brock: That is underneath the line on which the signature appears.

The Witness: I see. But at any rate it was our invariable practice to clarify and bring that out.

Mr. Brock: I apologize, Mr. Dooley. I didn't observe [30] that either.

Q. (By Mr. Brock): Now, when you found somebody who told you that they had been a member of some organization that you considered one that your department felt was not a good American organization you didn't reject the application, did you?

(Testimony of Ernestine Tolan.)

A. Our duty as a preliminary examiner was to refer the matter for further investigation to take such information as the applicant would give us and to put that in notation form and to put what I said on Exhibit 6 for our own office information, a hold on the case for investigation and further inquiry as to whether or not the applicant was loyal to the United States, because that was one of the requirements.

Q. But you didn't put a negative recommendation of any kind. You merely indicated that it should be further looked into?

A. Well, I would certainly have continued it. I mean in any instance. That would mean that as a preliminary examiner's duty.

The Court: I think the purpose of the question is to determine that the witness did not have the final say.

The Witness: I did not. I was preliminary examiner. The only possible recommendation that I could make would either be to continue it or to grant a continuance and that would be purely preliminary to what the designated officer [31] and later the court would decide.

Q. (By Mr. Brock): You did not have the authority to put on there "not recommended"?

A. I had the authority to put down "continued." I suppose that I could have put "denied" but we would not ever recommend "denied" without first having a full investigation and inquiry as to the character of the applicant. The office itself would do that and that was the practice.

(Testimony of Ernestine Tolan.)

Q. There was no rule in your department at that period that membership in any organization of itself was sufficient for denial of citizenship, was there?

A. Well, I couldn't say in the department. As far as preliminary naturalization examiners, as I indicate here, my job was to find out if there were any affiliations which were of a questionable nature and if the petitioner indicated any such affiliation, to recommend that we have a full investigation and inquiry because this was simply a preliminary hearing for preparation of an application. An application had not even yet been filed with the court, sir. This was just for the preparation of an applicant's application which would be later filed.

Q. Now, at this period in the Immigration Service you did have a—well, if I may use the term, a file of some kind relating to people who had been members of an affiliated organization, didn't you?

A. You mean as a preliminary examiner did I have a file?

Q. No, I do not. I mean that your department, the investigation section had in it archives or records in which they had the names and data on a number of people—dossiers, isn't that right?

A. Well, sir, I wouldn't know. I never served in the investigation department. You would have to ask somebody else. I could not say that I ever saw such a document or ever was told that they had such a document.

(Testimony of Ernestine Tolan.)

Q. Wasn't there a place in your department where you could telephone and say, "I have the name of a certain person. Do you have any information on him?"

A. As a preliminary examiner at that period I never had instructions to do that.

Q. But you knew there was such a place?

A. I knew that if they revealed to me an affiliation with an organization which appeared to be of questionable or unknown nature or if they indicated that they had had at any time such an affiliation, I referred it to a section who then had the duty to take full—make full inquiry into the matter.

Q. Now, your primary function in the naturalization process was to see if there was anything in the application to excite any suspicions and if there were to refer it to [33] somebody else, isn't that true?

A. If there were any indications that there was reason to believe that there may have been any disloyalty to the Government because, sir, as a preliminary examiner part of our duty was to determine whether or not the petitioner or to help determine whether or not the petitioner, was loyal to the Government of the United States.

So, if there was any doubt about it then I so indicated and I would have continued it for a full investigation and inquiry into the facts.

Q. How long prior to October of 1943 had you resided in Los Angeles, Mrs. Tolan?

(Testimony of Ernestine Tolan.)

A. Well, do you mean in Los Angeles County, sir?

Q. Yes, in the general area.

A. Well, gracious, I came here when I was in the University of Southern California. Is that what your mean?

Q. It would be for a number of years?

A. Oh, many years, yes.

Q. You knew what the Red Squad of Los Angeles City Police Department was, didn't you?

A. Well, I couldn't say that I had full information on that, sir. No, I couldn't say that.

At times we knew that there were records of the police department that were kept with respect to certain petitioners, but as far as I personally having any concept or knowledge [34] of the police department, I did not.

Q. You didn't have an invariable practice with reference to the Red Squad of the police department?

A. As a preliminary examiner I did not have any contact with the police department or the Red Squad of the police department.

Q. Didn't you know, not so much as a preliminary examiner, but just as a citizen who lived in this area what the function and activities of the Red Squad were?

A. Well, I would say that in a general way I probably had an idea as to what the function of the Red Squad was.

Q. Now, you saw on the second page of Exhibit

(Testimony of Ernestine Tolan.)

Mr. Diamond's answer to your question about arrests, didn't you? A. Yes, sir.

Q. And you saw that he said that he had been arrested by Captain William F. Hines of the Red Squad, didn't you? A. Yes, sir.

Q. And didn't this excite any kind of feeling in your mind that he might be a member of some group that the Red Squad was interested in?

A. I asked him about this—I asked him in detail and he, according to my notes in Exhibit 6, as you will see, I made a memorandum that he stated that the arrest was one that was for an alleged misdemeanor and the case was dismissed.

Q. Did you ask him what the misdemeanor was?

A. I apparently asked him about it because I wrote here under "Arrests" offenses, convictions or other disposition. And on Exhibit 6 I elaborated on question 30. In other words, he had written that in so I asked him about it.

Q. What did you find out from him?

A. What my notes indicate, that he had had an arrest in 1930 or in 1933 in Los Angeles for an alleged misdemeanor; that the case had been dismissed and that he had had one or two traffic fines and that the highest fine he ever paid was $5, and he never had any other arrests of any kind.

Q. Is that what you say in your handwriting?

A. That is what I say in green ink on this exhibit.

Q. That he never had any other arrests?

A. That is right, no other arrests.

(Testimony of Ernestine Tolan.)

Q. Now did you assume then that the Red Squad had arrested him for a traffic offense?

A. Well, sir, he says "Captain Hines of the Red Squad at Los Angeles City."

I asked him what the arrest was and he said that they had arrested him.

I can't remember anything other than what I have made a note of here, because I couldn't have any recollection except that I know that I asked him the question because that was my procedure.

I know further I asked him the question and and to explain [36] his answer there because I made a notation in my green ink under the little space that was allowed us for any elaboration as to arrests and offenses. And I asked him about it and from the notations that I have made here I can tell that he told me that he had been arrested and that the case had been dismissed and that he never had any other arrests.

Q. You didn't have some invariable practice as to inquiring into the nature of the arrests, I take it?

A. If the petitioner—we had to rely a good deal on the fact that the petitioner was testifying before us under oath and if the petitioner had indicated that he had had a conviction there then invariably we would have checked the arrest record but at this time the practice was that if he indicated and we had no reason to disbelieve him from the file or any indication to feel that there were any other arrests where he had indicated he had

(Testimony of Ernestine Tolan.)

had no arrests, and under oath to me he testified that he had only been arrested once and the case had been dismissed, and that he had never paid any fines higher than $5 and he had one or two traffic fines and no other arrests, then it was not my invariable practice to recommend investigation unless the file disclosed something which would have led me to believe that he was testifying falsely.

Q. Your question though relates to arrests or charges, doesn't it? It doesn't relate to convictions?

A. No, but he told me here that it was dismissed.

Q. The applicant had told you he had been arrested for grand theft and the case was dismissed. If he had told you that would you have accepted that without investigation?

A. If there was nothing in the file to indicate that he had. If he said that we might have inquired into it. It would depend a lot on it as in any case—it would depend on his demeanor and the assurances that were given under oath by this applicant.

As I note from my own memorandum here, showing that I did question him in detail about it, his assurances were such that I had no reason to suppose that he was saying anything under oath other than the truth.

Q. So that part of your questioning in this particular instance then was based on the demeanor of the applicant and how truthful he appeared to you, is that right?

A. Whether I put a hold on the case or not would depend upon the demeanor of the applicant.

(Testimony of Ernestine Tolan.)

Had he in the explanation which he gave me given me any reason to feel that there should be a further inquiry into it, I would have put a hold on there for a check of the arrest record.

Q. And you didn't feel that as a result—strike that, Mr. Reporter. You didn't feel that an arrest by the Red Squad had any kind of meaning?

A. I questioned the applicant and the only thing I can [38] say as to that is, seeing he had been arrested, I asked him in detail as to the nature of the arrest and he testified to me, under oath, according to my notes, and that is the only recollection that I can have specifically, that he had had this one arrest for an alleged misdemeanor and that the case had been dismissed and that other than that he had never had any arrests—that his record was clear except for one or two traffic fines; and that he never paid any fines other than—higher than $5 and no other arrests.

Q. Now, you knew at that time, Mrs. Tolan, that the term "misdemeanor" comprises a large body of offenses, didn't you? A. Certainly.

Q. And you knew that his answer to you that he was arrested for a misdemeanor was completely meaningless, didn't you?

The Court: That is argumentative, counsel.

Q. (By Mr. Brock): Did you feel that the answer "I was arrested——"

The Court: We don't care how she felt.

Mr. Brock: I think it is important in this situation, if the court please, because here we have a

(Testimony of Ernestine Tolan.)

case where the Department is under an affirmative duty if something is revealed to make inquiry and I think how she reacted to this situation is partly what we are dealing with. [39]

She has been telling us about this right along as I take it and I think her reaction to this is the gist and part of our contention here.

The Court: She already testified that the only recollection that she has is the refreshment of her memory from the green ink and nothing else.

Mr. Brock: I thought the court had allowed the Government to go into invariable practice.

The Court: I know, but she has told us about her practice.

Q. (By Mr. Brock): You were aware at that time, Mrs. Tolan, that an arrest record was kept in an official place in the City of Los Angeles, weren't you? A. Right.

Q. And that the record of this particular arrest could be further investigated?

A. I don't know whether they—I suppose so. I think there were instances where we did at that time certainly investigate arrests.

Q. And you knew that your investigating department had access not only to police but to FBI records?

A. Well, sir, I mean as a preliminary examiner I didn't have any——

Q. I didn't ask you what you did but just what you knew.

A. If it had been necessary to investigate this case [40] I assume that the investigation section

(Testimony of Ernestine Tolan.)

of our office would have had any necessary contacts to investigate it, if it had appeared necessary on the face of the information given.

Mr. Brock: I have no further questions.

The Court: Any further questions?

Redirect Examination

Q. (By Mr. Dooley): Now, Mrs. Tolan, in your examination of applicants as a pretrial examiner, to what extent did you rely upon the statements of the petitioner?

Mr. Brock: To which I will object as not being proper rebuttal.

The Court: I don't understand the question.

Q. (By Mr. Dooley): To what extent did you rely upon the statements of the petitioner in connection with arrests?

Mr. Brock: I will object to that testimony in this case because I take it——

The Court: I think she has already been asked and has answered that question. In answer to your question she said she relied upon the statements of the applicant.

Mr. Brock: That is right, your Honor.

The Court: So I don't know just why you ask that question now.

Mr. Dooley: No further questions, your Honor.

The Court: That is all. May this witness be excused? [41]

Mr. Brock: Could I ask one other question?

The Court: Yes.

(Testimony of Ernestine Tolan.)

Recross Examination

Q. (By Mr. Brock): Were you an attorney in 1943, Mrs. Tolan? A. Yes, 1932.

Q. That predates me, Mrs. Tolan. In October of 1943 had you read the Schneiderman decision?

The Court: I didn't understand the question.

Mr. Brock: I asked her if she had read the Schneiderman decision.

The Witness: Prior to October of 1943?

Q. (By Mr. Brock): Yes.

Mr. Dooley: Object to that on the ground it is incompetent, irrelevant and immaterial.

Mr. Brock: It is a preliminary question. I just have one or two more along that line.

The Witness: I don't remember whether at that time I would have read it, sir, or not.

Q. (By Mr. Brock): Was it the subject of discussion in your department when it came out?

Mr. Dooley: I object to that on the ground it is incompetent, irrelevant and immaterial and outside the scope of the examination.

Mr. Brock: There is a point and these questions and [42] merely preliminary. If I don't tie them up——

The Court: What is the purpose of the question?

Mr. Brock: What I am trying to get to is the point this decision was discussed in the Immigration Service.

The Court: I can't hear you.

Mr. Brock: I am sorry, your Honor. That the

(Testimony of Ernestine Tolan.)

Schneiderman decision was a subject of discussion in the Immigration Service and as a result of that discussion their practice changed.

The Court: Then why don't you get right to the point and ask her?

Mr. Dooley: I still object to the question on the ground of relevancy and materiality and outside the scope of the examination.

The Court: I will permit the question. Ask the question directly. If you are going to beat around the bush I will sustain the objection.

Q. (By Mr. Brock): Isn't it the fact that after the Schneiderman decision came out there were discussions and conferences in the department about it and that it was concluded that membership in this Communist Party organization was not a ground for refusing citizenship?

A. I couldn't answer that, sir. I mean the practice—the preliminary examiners did not establish the practice in the office. [43]

Mr. Brock: I have nothing further.

The Court: May this witness be excused?

Mr. Brock: Yes, your Honor.

The Court: Counsel, may this witness be excused?

Mr. Dooley: Yes, your Honor.

The Court: We will take our morning recess of five minutes at this time.

(Short recess.)

The Court: Call your next witness.

Mr. Dooley: The plaintiff calls Mr. Homer Terrill.

HOMER B. TERRILL

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Homer B. Terrill.

Direct Examination

Q. (By Mr. Dooley): Mr. Terrill, where do you reside?

A. I am residing at the present time at Paradise, California.

Q. And what is your business or profession?

A. I am a retired naturalization examiner. I retired from the service April 1st, 1946.

Q. And on October 7, 1943 were you a naturalization examiner? [44] A. I was.

Q. Where?

A. Stationed at Los Angeles, California.

Q. And how long had you been a naturalization examiner on October 7, 1943?

A. Ever since December 1st, 1921.

Mr. Dooley: Will the clerk please hand the witness Exhibit 4 in evidence, which purports to be an application for Certificate of Arrival and preliminary form for Petition for Naturalization and Exhibit 6 in evidence, which purports to be a Petition for Naturalization No. 112600 in triplicate.

(Documents handed to the witness.)

Q. (By Mr. Dooley): Mr. Terrill, I will ask you to examine Exhibit 6 and tell the court whether your signature appears on that document?

A. On the reverse of the triplicate petition my

(Testimony of Homer B. Terrill.)

signature appears indicating that I was the designated examiner who conducted the preliminary hearing on that case on October 7, 1943.

Q. And will you look at Exhibit 6 and tell the court whether your initials appear on that document?

The Court: That is a different document, is it not?

Mr. Brock: Exhibit 6, your Honor.

Mr. Dooley: It is the same exhibit.

The Witness: My initials appear under the date of October 7, 1943, indicating that I heard and excused the [45] witnesses to the petition at that time.

Q. Now, what if anything—why did you sign that document, Mr. Terrill?

A. I signed the document to indicate I had conducted the preliminary hearing.

Q. In what capacity?

A. As designated hearing examiner or hearing officer.

Q. On October 7, 1943 what were the duties of a designated examiner in general?

A. The designated examiner——

The Court: Hasn't that been gone over, counsel, without repeating it?

Mr. Dooley: I believe the preliminary examiner was Mrs. Tolan and he occupied a different position as a designated examiner.

The Court: I see.

The Witness: The designated examiner acted in

(Testimony of Homer B. Terrill.)

the capacity of a hearing officer to hear the testimony of a petitioner and his witnesses and make findings of fact and draw conclusions of law with the object of determining from the entire record in the case whether the applicant should be granted —whether the application should be granted, denied or continued and submitting a recommendation to the court, thus relieving the court of the burden of hearing all that detail. [46]

Q. Now, on October 7, 1943 in your examination of petitioners for naturalization, did you have a practice with regard to placing the petitioners under oath?

A. The petitioner and the witnesses were always sworn before the examination started.

The Court: The petitioner and witnesses?

The Witness: Petitioner and witnesses, yes, your Honor.

I would call them forward. The petitioner usually was flanked by his witnesses and raised my right hand and asked them to be sworn:

"Do you solemnly swear the testimony you will give in this naturalization proceeding will be the truth, the whole truth and nothing but the truth, so help you God?"

Q. (By Mr. Dooley): And by examining Exhibit 6 did you do that in this particular case?

Mr. Brock: May we have for the record the same objection we made preliminarily in the other —in the case of the other witness, as to any testimony based on invariable practice?

(Testimony of Homer B. Terrill.)

The Court: Yes. I don't believe the last question was answered, was it?

Mr. Dooley: Will you read the question?

(Question read.)

The Witness: Yes.

Q. (By Mr. Dooley): Now, on October 7, 1943, in your [47] examination of petitioners as designated examiner, did you follow any procedure in questioning petitioners?

A. The first thing, the first question that I would ask an applicant after they identified themselves by name, the applicant and witnesses, I would ask the applicant whether all of the statements he had made in connection with his naturalization application had been true. I felt that it was necessary——

The Court: We don't care what you felt but what you did.

The Witness: I did that to incorporate in the testimony everything that had gone before—that was done before the preliminary examiner because of the extent of the detail and the long list of questions—I just couldn't have repeated that all over again. It would have been physically impossible.

Mr. Brock: I don't believe it is clear whether the witness is testifying as to practice or as to memory in this case.

The Court: I understand you have no actual recollection of this particular petitioner, have you?

The Witness: I don't remember the petitioner and as far as this actual record is concerned I am

(Testimony of Homer B. Terrill.)

refreshing my recollection from my notations on the case. But I can testify that I always asked that question of the applicant.

Mr. Brock: That is what I wanted understood.

The Witness: And also before proceeding with any further [48] questions that I asked the witnesses "Do you swear that the statements you have made before throughout the case and in the affidavits supporting the petition have been true?"

As I stated, the facts shown in this application —there are 35 on page 1 and the others number 23. All of these details had been sifted out in the preliminary examination and I had a different prospective from the preliminary examiner. I wasn't immersed in all that detail. I incorporated, as I felt, everything that had gone before by the nature of my questions before I proceeded with the general questioning from then on.

The questioning would take the form, according to what particular facts and circumstances were shown in the record. Every agent has a different personality. You don't handle all of those cases alike. You can't. I can't tell from this record just what questions after that assurance from the petitioner and the witnesses were asked, but it was my general practice to refer to the notes of the preliminary examiner and discover whether there were any loose ends that should be gone into, or any further instructions I would need to give to the applicant.

I wasn't in a position to deny or admit an appli-

(Testimony of Homer B. Terrill.)

cant for citizenship. In my capacity as hearing officer I had a quasi judicial status, you might say, it was an arm of the court and I could simply recommend to the court whether the [49] application in my opinion conformed with the statutory requirements.

Q. (By Mr. Dooley): Now, Mr. Terrill, if information had come to you during the course of your examination of a petitioner as designated examiner, that he was or had been a member of the Communist Party what, if anything, would you have done?

A. I would have continued the case for further investigation. Probably referred the case to our investigating officers to get a full report on it and all the information available.

Q. And would a notation to that effect have been made on Exhibit 6?

A. Oh, yes. It would have been marked "continued for investigation — radical," or something like that and the investigating section, usually in a case like that, would call in an applicant and take an extended question and answer statement under oath with a stenographer and that record would then be referred back to the preliminary hearing officer for study.

Q. Now, the practice of procedure which you previously described to the court, based upon Exhibit 6, did you follow that procedure in this case?

A. Yes, that is true.

Mr. Dooley: No further questions. [50]

(Testimony of Homer B. Terrill.)

The Witness: I might state that the testimony of the petitioner and the witnesses in this case was all apparently favorable.

Cross Examination

Q. (By Mr. Brock): Mr. Terrill, I haven't seen Exhibit 6. Do you have it, Mr. Dooley? The only thing on this that you wrote is your signature or was there—is it all right if I approach the witness? I don't have this copy, your Honor.

The Court: Yes.

The Witness: Here I indicated that I had heard and excused the witnesses and put my initials there.

Q. (By Mr. Brock): That date looks like 1949. It is really a 3.

A. That is the reason I misspoke at first. '43. That is the date of the preliminary hearing where the witnesses were excused.

Q. Is this your handwriting there?

A. This is my handwriting and here is my signature at the bottom of the form indicating as designated examiner, that I had presided at this hearing.

Q. Now, the information on the back, did you have anything to do with that? I guess it is really the front of Exhibit 6.

A. This is a triplicate original of the actual petition [51] that had been filed shortly before with the deputy clerk of the court and this I always, before the applicant was called forward with

(Testimony of Homer B. Terrill.)

his witnesses, this I checked item by item as to form and substance to see if there was no mistake and everything was filled in and it was all right.

Q. Now, did you customarily get the witness the same day that the witness appeared before the preliminary official?

A. Yes, the preliminary examiner usually questioned the petitioner first, going over the facts form and then called the witnesses one at a time and they appeared then with the petitioner after the petition was typed. It was all done in one extended operation.

Q. And then these forms—that is what is in evidence here as Exhibits 4 and 6, would be sent in to you and you would study those over and then talk to the applicant and the applicant's witnesses. Was that the practice then?

A. These forms were part of a naturalization file that was brought to the designated hearing officer. There were three or four examiners filling out petitions and interviewing.

Q. The point I am getting at is this, Mr. Terrill, the applicant would first be interviewed by somebody in the capacity of Mrs. Tolan?

A. Right.

Q. Then he would sit while those were being typed up, [52] the forms that he had filled out or given the answers to and then the forms would go into one of the people of your capacity, followed by the applicant and his witnesses. Isn't that the procedure?

(Testimony of Homer B. Terrill.)

A. The form would usually be brought to me the same time the petitioner and witnesses were sent before the deputy clerk of the court.

Q. And you went over the form in addition to asking questions of the petitioner and witnesses, didn't you?

A. Some of these files are pretty thick. I examined the file in general and with particular reference to the notes of the preliminary examiner as to anything that was special on the case and the notes on the back of the triplicate petition. I can't say that I always read throughout all of the statements in the application forms.

Q. Now, wouldn't you read them over—wouldn't you have read in this or any other case, the reference to arrests?

A. If it had been indicated in red ink. I would leaf through it and if there was any indication calling it to my special attention I would have gone into it but I can't be sure that in this case how much of this I read.

Q. You didn't have an invariable practice that you can testify to at this point then, with reference to the form in evidence as Exhibit 4?

A. This is Exhibit 4. [53]

Q. You had no invariable practice as to that form then?

A. I didn't read it and ask the applicant question by question all of these things that the preliminary hearing officer asked.

(Testimony of Homer B. Terrill.)

Q. I understand that. Mr. Terrill, but you did read the form over, didn't you?

A. Not necessarily. I can't state that I always read this form over. I paid more attention to the notes of the examiner and the special notes regarding anything that had been unearthed in the preliminary examination.

Now in this case I undoubtedly, finding here a record of arrests, would have asked or secured an assurance from the applicant that he had never been charged with any serious crime or convicted of any crime other than minor traffic violations. That undoubtedly was part of our conversation.

Q. Then you did notice and make a notation of this arrest?

A. I didn't make any notation of it.

Q. I am sorry, sir. You did notice it, though. It was on the form that you did read?

A. Undoubtedly I saw that there had been minor traffic arrests admitted and nothing serious claimed. I wouldn't necessarily have checked this.

Q. Just a moment, Mr. Terrill. You didn't notice just [54] minor traffic offenses but you did notice an arrest, didn't you? A. Yes, sir.

Q. And then did you note—was it not your practice to check back on the other form where there was a record of arrests just to make sure it was covered there also?

A. This didn't always give it in detail. I had a uniform practice of referring to this form, the pertinent facts having presumably been written up

(Testimony of Homer B. Terrill.)

by the examiner. I doubt in this particular case whether I did inspect the Exhibit 4 as to arrests.

Q. So that really and truly all you did in your capacity was to rely upon what had been done by the party who preceded you?

A. Not entirely. I formed my own independent judgment and had my own line of questioning.

Q. You formed your own independent judgment based entirely on whether or not the party preceding you had made any significant notations?

A. That was a part of the material on which I relied and only a part.

Q. And it was not then—if your attention was called to an arrest in this Exhibit 6 it was not your practice to check back into Exhibit 4 to see what that might show? A. Not universally. [55]

Q. You didn't have any invariable practice then in that regard?

A. I can't say that I invariably inspected the facts form as to arrests unless it was marked with red pencil or something like that.

Q. Now, none of this practice that you have been speaking about as being invariable was predicated or based on any type of a handbook or memorandum from any higher authority in your department, was it? A. Your question isn't clear.

Q. I am sorry. None of the invariable practice that you have been talking about was based on any memorandum or written order from any authority in your department, was it?

Mr. Dooley: Your Honor, the question is ambigu-

(Testimony of Homer B. Terrill.)

ous and is too broad in scope. It covers everything that the witness has testified to and should be made more specific as to just what he is referring to.

The Witness: The only invariable practice that I have mentioned myself, and I am not sure I used that term at all, was that I always swore the applicant and the witnesses before starting a hearing and that I always secured at the start, before I went into general questioning, an assurance under oath that everything that had gone before in the way of their testimony had been true.

Q. (By Mr. Brock): And from that point on in your [56] examination you proceeded in your own fashion without any invariable practice?

A. That is right.

Mr. Brock: I have nothing further, your Honor.

The Court: Any further questions?

Mr. Dooley: No further questions, your Honor.

The Court: That is all. You are excused. Call your next witness.

Mr. Dooley: Your Honor, I would like again, in the plan of the case I had intended to follow, I had intended to call the defendant David Diamond as an adverse witness at this particular point in the proceedings.

I would like to ask again whether counsel have authority to represent the defendants since we have no knowledge of their whereabouts and we don't know the last time that counsel has contacted them, or whether the defendants are even aware that the trial is taking place.

I would like the record to show whether or not counsel has communicated with the defendants and still have authority to represent them at this proceeding.

Mr. Brock: I am deeply touched by Mr. Dooley's concern as to whether or not we represent the clients.

We represented them throughout. We appeared in different sessions. We have been in this court a number of times. If we don't nobody is properly in court and I certainly am not [57] going to advise Mr. Dooley as to any conferences I have had with my clients and he knows that.

The Court: Now, counsel, this court can't help but feel that that is what is called "slick practice" and you can't come here in court and tell me that you don't know where your clients are.

Mr. Brock: I not only can, your Honor, but I am and I object to the insinuation of "slick practice." There is nothing slick about it.

The Court: I don't care what your objections are. I consider it "slick practice."

Mr. Brock: I have tried a number of lawsuits——

The Court: I don't care how many lawsuits you have tried, but you haven't tried enough to know what is right and what is wrong.

Now, they have asked for the production of your clients. I have had that come up before, but I have never had an occasion in nearly 20 years' experience of counsel refusing to produce their clients.

Mr. Brock: This, I take it, your Honor, is a civil lawsuit. It is not a criminal lawsuit. The Govern-

ment has no right and there is no law that I have ever been advised of as to the Government's right to have a party present in court. If they want him they have subpoena powers.

I can tell the court of my own knowledge that the Diamonds [58] were in Los Angeles Wednesday of last week, and that is the last time I saw them.

I don't see any reason why they are obligated to produce themselves in court.

The Court: May I ask this. Did you advise them to stay away today?

Mr. Brock: I did not advise them to stay away today. I told them they did not have to be present at the hearing.

Mr. Dooley: Your Honor, the plaintiff moves for a continuance to such time as the defendants can be served with a subpoena to appear.

The Court: Haven't you any other witnesses you can go ahead with?

Mr. Dooley: Yes, I have one witness.

Mr. Brock: I might point out to the court that the deposition of the Diamonds was taken fully—was fully taken and I don't know what counsel wants to ask now that he hasn't asked in the deposition.

He had a full opportunity. We produced the clients for the deposition.

The Court: Counsel, I think the request is a reasonable one and if it is necessary to grant a continuance for that purpose I am going to do it because I feel that somebody has been guilty of

sharp practice. And I am looking straight at counsel when I say that. And if counsel thinks he is [59] increasing his stature here by that kind of practice, that is all right, but I would like to consume the time with what witnesses you have, counsel.

Mr. Brock: I would like to know this, if the court please, what Mr. Dooley proposes to ask that he hasn't asked already. He had these people in on deposition.

The Court: He isn't under cross examination, counsel.

Mr. Brock: I thought I wasn't either.

The Court: You are as far as the court is concerned. The court is questioning very seriously your ethics.

Mr. Brock: There is a state bar and I will stand before them on any occasion.

The Court: This court isn't interested in the state bar.

Mr. Brock: For the record at this time I would like to make a motion for a mistrial. I think on the basis of what has just transpired it is obvious that there cannot be a fair hearing in this proceeding.

I am completely at a loss to find any type of authority that an attorney is obligated to produce a client in court in a civil lawsuit. And if counsel has any I would certainly like to see it.

And I move at this time for a mistrial.

Mr. Dooley: Counsel is merely asking for a con-

tinuance so that the defendants can be served with subpoenas and so they can act as witnesses, which is prescribed under Rule 43 (b), which is a rule of civil procedure and which the plaintiff is entitled to take advantage of.

Mr. Brock: I don't question counsel's right to call them.

Mr. Dooley: And with respect to the depositions, since the clients are the only ones who can claim the privilege against self-incrimination, plaintiff does not know whether the defendants will continue to claim the privilege against self-incrimination as they did in the taking of the depositions. And since counsel for the defendants have not been in communication with their clients for some time I doubt if we would know at this time whether they haven't changed their minds and would like to give testimony different from that which was given during the course of the depositions.

However, the plaintiff will withhold its motion until after its next witness, Mr. Hozman, is called, since the court would like to consume the time.

Mr. Hozman, will you take the stand?

The Court: The motion for a mistrial is denied.

Mr. Gostin: Before Mr. Hozman is called I would like to make a clarification.

Mr. Dooley uttered the word "clients" in the plural. I think the record should be clear.

I represent Mrs. Diamond and Mr. Brock represents Mr. [61] Diamond.

The Court: I note you have been very quiet.

Mr. Gostin: I just wanted the record to show that we each represent one client.

Mr. Dooley: Mr. Samuel Hozman, will you take the stand?

SAMUEL HOZMAN

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Samuel Hozman.

Direct Examination

Q. (By Mr. Dooley): Mr. Hozman, where do you reside? A. 8621 Olin Street, Los Angeles.

Q. And what is your business or profession?

A. I am a naturalization examiner with the United States Immigration Service.

Q. How long have you been employed with the Immigration and Naturalization Service?

A. 15 years.

Q. And in what capacity were you serving with the Immigration and Naturalization Service on January 17, 1944?

A. As a designated examiner.

Q. On April 4, 1944?

A. As a designated examiner. [62]

Mr. Dooley: Will the clerk please give the witness Exhibit 21 for identification?

(Document handed to the witness.)

Mr. Gostin: Mr. Dooley, is that on the same sheet you gave me?

Mr. Dooley: For the record I would like to state that Exhibit 21 for identification is a Peti-

(Testimony of Samuel Hozman.)

tion for Naturalization No. 116085, triplicate copy, relating to defendant Freeda Diamond.

Q. (By Mr. Dooley): I ask you to examine Exhibit 21 for identification, Mr. Hozman, and tell the court whether your signature appears on that document? A. Yes, it does.

Q. Where?

A. The last line of that page of the triplicate of this exhibit contains my signature as designated hearing officer on the bottom of the page.

Q. And on what date did you sign that document? A. January 17, 1944.

Q. And for what purpose did you sign that document?

A. That is a designated examiner of this Petition for Naturalization.

Q. Now, on January 17, 1944 in your examination of applicants for naturalization as designated officer, examining officer, did you have a practice with regard to placing the [63] applicants under oath? A. Yes, I did.

Mr. Gostin: To which we object, your Honor, for the purpose of the record, since these cases are separate, I felt a separate objection is necessary on questions dealing with practice. The only thing that is relevant is what he actually did.

The Court: Objection is overruled. Just a moment. Was that a custom in your work?

The Witness: Yes, your Honor.

The Court: An invariable custom?

The Witness: Oh, yes, yes.

(Testimony of Samuel Hozman.)

The Court: Were you working under instructions?

Mr. Brock: We can't hear the court.

The Witness: Yes. Of course we were required by law to swear them all under oath.

Mr. Brock: All right.

Mr. Gostin: Thank you.

Q. (By Mr. Dooley): And did you swear this applicant under oath, the applicant shown on Exhibit 21 for identification? A. Yes, I did.

Q. At what time during your examination as designated examiner did you swear the applicant?

A. Immediately as they appeared before me. I would [64] have them raise their right hand and take the oath and then proceed with the questioning thereafter.

Q. Now, on January 17, 1944 in your capacity as designated examiner did you follow any particular procedure in questioning applicants for naturalization? A. Yes.

Q. What was that procedure?

Mr. Gostin: Object, your Honor. This is irrelevant and immaterial and on the same grounds previously stated. And may it be understood I have a continuing objection?

The Court: Yes.

The Witness: I would first place the petitioner and the witnesses under oath. Then I would question them as to whether the statements they made before the preliminary examiner were all true and correct.

(Testimony of Samuel Hozman.)

I asked them if there were any changes he desired to make at that time. I would then question the witness as to the length of time that they knew the petitioner, how often they saw him.

I would question the witnesses as to their knowledge of the petitioner, whether they recommended him for citizenship.

I would ask the petitioner as to the length of time he resided in the area.

I would ask the petitioner as to whether they had ever been arrested, as to what organizations they may have belonged [65] to and whether they would be willing to take the oath of allegiance to the United States, and their willingness to fight for the United States.

Q. (By Mr. Dooley): Now, did you follow that procedure in this case, referring to the case as shown by Exhibit 21 for identification?

A. Yes, I did.

The Court: Do you have any records as to the questions you asked and the answers given?

Mr. Dooley: I am going to get to that, your Honor. I have some documentary evidence on that.

The Court: Let us get down to it.

Mr. Dooley: Will the clerk please give the witness Exhibit 23 for identification which purports to be a note of an immigration official dated January 17, 1944.

(Document handed to the witness.)

The Witness: Yes.

Q. (By Mr. Dooley): Mr. Hozman, will you

(Testimony of Samuel Hozman.)

examine Exhibit 23 for identification and tell the court whether your handwriting appears on that document? A. Yes, it does.

Q. What portion of the document is in your handwriting?

A. The entire portion is in my handwriting except a notation on the bottom thereof, the notation saying, "Asked for copy of A. R. record" and dated 2/2/44, initial R. G. [66]

Q. Mr. Hozman, I observe that Exhibit 23 states "petition states not a member of any organization except the Ladies Educational Club."

Why did you make that notation?

Mr. Gostin: Object to that.

The Court: What does that notation signify?

Q. (By Mr. Dooley): What does that notation signify?

Mr. Gostin: Same thing. It still calls for a conclusion.

The Court: He can interpret his own notes or memoranda that he made.

Mr. Gostin: Yes, if he has a present recollection refreshed by that document. Nothing has been shown as to that.

The Court: Does that refresh your memory as to what you meant by that?

The Witness: Yes. I know what I meant by it.

The Court: What did you mean by it?

The Witness: I asked her whether she belonged to any organization and she had said that she did

(Testimony of Samuel Hozman.)

not belong to any organizations except the Ladies Educational Club. My notes are clear to me.

Q. (By Mr. Dooley): I also observe, Mr. Hozman, that Exhibit 23 states:

"But see A. R. report attached showing membership in Silver Shirts, et."

To what report were you referring? [67]

A. I was referring to the alien registration report or, rather, I was referring to a transcript from the alien registration report which indicated that this petitioner was a member of certain organizations.

Mr. Dooley: Will the clerk please give the witness Exhibit 25 for identification?

(Document handed to the witness.)

Mr. Dooley: Which purports to be a document dated November 11, 1943.

Mr. Gostin: Excuse me, Mr. Dooley. What exhibit number was that?

Mr. Dooley: 25, which purports to be a document dated November 11, 1943, file No. 23-66179, addressed to the application examination section.

Q. (By Mr. Dooley): Will you examine Exhibit 25 for identification, Mr. Hozman, and tell the court if that is the form to which you referred on your note? A. Yes, it is.

Q. Do you know the source of the information contained in this Exhibit 25 for identification?

Mr. Gostin: That may be answered yes or no.

The Witness: Yes.

Q. (By Mr. Dooley): What was the source?

(Testimony of Samuel Hozman.)

Mr. Gostin: Objected to, your Honor. That would be hearsay, the source of the information.

The Court: Let us find out what the facts are, counsel.

The Witness: This is entitled "The alien registration record, tabulating cards."

"This office contains the following information concerning the person named below."

Now, this is an excerpt or resume of the facts which are contained on the original alien registration record.

Item 11 of this form indicates that the petitioner was a member of a—a national member of a national political organization such as Silver Shirts, American League for Peace and Democracy.

Q. (By Mr. Dooley): And what meaning, if any, did item 11 have to you?

The Court: I think that calls for a conclusion, counsel.

Mr. Dooley: I will withdraw that.

The Court: This information does not tend to establish proof of this fact. You see what I mean. The fact that they have a notation there doesn't prove or disprove that she was a member of such an organization.

Mr. Dooley: No. I was trying to establish what occurred after he had this particular form and what action he took and what the state of mind was.

The Court: I don't care what his state of mind was. What he did is the thing we are after.

Mr. Dooley: Now, will the clerk please give the witness—— [69]

(Testimony of Samuel Hozman.)

The Court: Just a moment. What did you do with this information?

The Witness: When I saw this—I saw this form was in the file at the time I examined the petitioner and seeing this form I asked him then as to whether or not she had been a member of any organization and she said "none except" as indicated by my memorandum of that date. She said "None except the Ladies Educational Club."

And that was at variance with the information which I have.

The Court: Did you ask her about that? Do you have any personal recollection as to these matters?

The Witness: No, I don't.

The Court: You don't know whether you asked her about it or not, do you?

The Witness: No, I don't, your Honor. All I know is the note I made which indicates, which says that I did ask her and she said "none" and then I made a further—shall I go on and explain what I did after that?

Q. (By Mr. Dooley): Yes.

The Court: Explain your notes if you don't have any personal recollection. The only thing you can do is explain your notes.

The Witness: Yes. Then I have a further note——

Mr. Dooley: Will the clerk please give the witness [70] Exhibit 24 for identification?

(Document handed to the witness.)

Q. (By Mr. Dooley): Now, will you explain, based upon your notes, Mr. Hozman, will you ex-

(Testimony of Samuel Hozman.)

plain what occurred subsequent—I will withdraw that.

I refer you to Exhibit 24 for identification and ask you whether your handwriting appears upon that document? A. Yes, it does.

Q. And what portion of that document, if any, is in your handwriting?

A. The lower portion of that document directly under the initials M. E. B. is in my handwriting.

Q. Now, based upon your notes, Mr. Hozman, will you tell the court what occurred subsequently, subsequent to your first note?

The Court: What are the notes that you have there?

The Witness: It says "Okay. Photocopy of A. R. shows no membership in any subversive group."

Q. (By Mr. Dooley): Now, did you see a A. R. record at the time you made that second note?

A. Yes.

The Court: What does A. R. record mean?

The Witness: A. R. record is the original Alien Registration Record which was given by or recorded at the time the petitioner was registered as an alien in the year 1940. [71]

Certain information was given by her at that time and these statements were taken from that record.

Mr. Dooley: And will the clerk give the witness Exhibit 18 for identification, which is the alien registration form 5812590.

(Document handed to the witness.)

Q. (By Mr. Dooley): Now I will ask you, Mr. Hozman, to examine Exhibit 18 for identification

(Testimony of Samuel Hozman.)

and tell the court whether that is the document to which you referred on your note contained in Exhibit 24? A. Yes, it is.

Q. Now, after you received that document, Mr. Hozman, what did you do?

A. I examined this document. I noted in item 16 that the organizations listed therein to which she had stated that she had been a member of the singing chorus International Workers Order. No other organizations were listed therein.

Q. And what did you do after that, Mr. Hozman?

A. I made this note: "Okay. Photocopy of A. R. shows no membership in any subversive organization or group," and that is dated 4/4/1944.

Q. Now, referring again to Exhibit 23, which is the note dated January 17, 1944 and to the note in pencil at the bottom which reads:

"Ask for copy of A. R. record and dated 2/2/44. R. G." [72]

Do you know whose initials R. G. represent?

A. Yes.

Q. Whom?

A. That is the initials of Mr. Ray Griffin. He was at that time, he was the chief of the nationality section for the Immigration and Naturalization Service.

Q. Now, referring to Exhibit 21 for identification and to the phrase "Okay L. S. H., 4/4/44" appearing on that exhibit, what if anything does that notation mean?

A. It indicates that I had referred the case to

(Testimony of Samuel Hozman.)

investigation regarding the loyalty of this petitioner because of the A. R. report, or the Alien Registration Report.

When the Alien Registration Report came back and showed no derogatory information I marked it "Okay" and initialed it.

Q. And by your marking it "Okay" did you mean you had cleared the petitioner?

A. Yes. That meant I cleared the petition.

Q. Now, if the appligant had told you that she was or had been a member of the Communist Party would you have cleared the petitioner?

A. No.

Mr. Gostin: We object to that as a hypothetical question.

The Court: I think that is true, counsel.

Mr. Dooley: Perhaps I should reword the question, your [73] Honor.

The Court: I think you can find out whether it is the custom to clear people that belong to a subversive organization.

The Witness: It isn't.

Q. (By Mr. Dooley): Was it the custom to clear persons who were or had been members of the Communist Party at that time? A. It was not.

Q. What was it the custom to do?

A. Refer such cases to investigation.

Mr. Gostin: Just so the record is clear. The word that was used in the last two sentences "custom" I would like my objection to invariable practice to cover custom as well.

The Court: That is understood, counsel.

(Testimony of Samuel Hozman.)

Q. (By Mr. Dooley): Now, if any information had come to you——

The Court: You are surmising when you ask "Did any information come to you."

Mr. Dooley: Yes, I will reword the question, your Honor.

Q. (By Mr. Dooley): What was the custom if information had come to you as designated examiner that the applicant was or had been a member of the Communist Party?

A. I would refer the case to the investigation section.

The Court: In other words, you would not have okayed [74] the petition?

The Witness: Oh, no.

Mr. Dooley: Your Honor, plaintiff offers in evidence Exhibit 21, 23 and 24 for identification and also Exhibit 25.

The Court: They all have to do with this particular witness' testimony that he has identified?

Mr. Dooley: Yes, your Honor. And so I also offer Exhibit 18 in evidence.

The Court: What is 18?

Mr. Dooley: That is the alien registration form which in this case the signature has been admitted as genuine of the defendant on his answer to requests for admissions.

And 19 which the signature is of the defendant has been admitted as genuine.

20 I offer in evidence wherein the signature of the defendant has been admitted as genuine. And

(Testimony of Samuel Hozman.)

I have already offered 21. I offer 22 where the signatures have been admitted as genuine. So in this case, your Honor, I offer Exhibits 18 through 15 in evidence as Defendant's—I should have said 18 through 25, your Honor. I offer Exhibits 18 through 25 in evidence as Plaintiff's Exhibits 18 through 25.

The Court: They will be admitted.

(The exhibits referred to, marked Plaintiff's Exhibits 18 through 25, were received in evidence.) [75]

The Court: Counsel, counsel for the defendants state you have a deposition here. Why can't you use that deposition instead of holding up this trial. I have got a whole week set aside for this case.

Mr. Dooley: Well, I will have to contact some witnesses. I had spaced it out. I will see if I can get them during the lunch hour and get it more compact than I had planned it.

I will proceed if your Honor insists. However, I would like to call the defendants as adverse witnesses.

The Court: There are certain questions of law involved in this case, counsel, that could be raised preliminarily. The question has always been raised in the pretrial briefs, the failure to file alleged authorities to file these actions and I might state in that respect, that that matter is before the Supreme Court of the United States now and I am not going to rule on that question. I am not going to

(Testimony of Samuel Hozman.)

guess what the Supreme Court is going to do with it. I am going to wait until they do it.

I don't know how soon it is coming up, but our Ninth Circuit has held, I believe, that we do not require that authority but the Second Circuit holds that it is required. So, there is not going to be a definite ruling on that point until the Supreme Court rules.

Mr. Dooley: Well, in that connection I have finished with this witness, your Honor, on the direct examination. [76]

Mr. Brock: Might I suggest, if the court please, on this question of time that Mr. Dooley has two depositions here and these, I take it, would have to be read into evidence. This certainly would help him in the terms of spacing his witnesses.

Mr. Dooley: I don't believe it is necessary unless they are going to be objected to, to read them into evidence.

The Court: Counsel, if the witnesses are not present you can use the depositions.

Mr. Dooley: The only thing is, your Honor, that during the depositions the witnesses pleaded self-incrimination. Now, whether the witnesses will continue to so plead I don't know because a plea against self-incrimination is a person's privilege and the witnesses may or may not assert that privilege.

The Court: You know that they are going to, don't you, counsel?

Mr. Dooley: Well, they may.

Mr. Brock: We have a suspicion they might.

The Court: What is that?

Mr. Brock: We have a suspicion they might.

The Court: You have more than a suspicion, haven't you?

Mr. Dooley: Now, there are certain matters that counsel for the defendant David Diamond has not yet admitted.

Counsel for the defendant Freeda Diamond has admitted the signatures on various naturalization documents. [77]

Mr. Brock: I thought we had done that informally. I told you we would do it and if I told you I would do it we will do it. Anything I said will be done will be done.

Counsel was going to submit me a written stipulation and we will go over it and whatever we agreed to we will still agree to.

Mr. Dooley: That is satisfactory but yet there is no assurance that the defendants will plead self-incrimination.

The Court: I think if you have their depositions we should go ahead.

I don't know what your point of "self-incrimination" means except that you told me when I asked you about some question of self-incrimination, you said there were exemplars of handwriting.

Mr. Dooley: Yes, and that is another reason——

The Court: And I am going to hold against you on that, counsel. I don't know why you can't use the depositions.

Mr. Dooley: Well, I probably can, your Honor,

but it would probably necessitate my calling up certain witnesses that I had scheduled for tomorrow morning.

The Court: Anyhow, we will take a recess at this time until 2:00 o'clock and see if you can get organized in the meantime.

Mr. Dooley: Yes, your Honor.

(Whereupon a recess was taken until 2:00 o'clock p.m.) [78]

Tuesday, February 28, 1956, 2:00 P.M.

The Court: You may proceed, gentlemen.

Mr. Dooley: Your Honor, we have certain matters that we are stipulating to.

Mr. Brock: We have a written stipulation that Mr. Dooley prepared in the David Diamond case and there are a couple of corrections made in pencil.

I would just like to read those into the record.

The Court: Read the whole stipulation so I will have it.

Mr. Brock: It is rather lengthy.

The Court: I don't know what facts it covers, counsel.

Mr. Brock: "It is hereby stipulated by and between the parties hereto through their respective counsel——"

The Court: Don't read too fast, so the reporter can get it.

Mr. Brock: "——subject to approval of court:

"a. That paragraph VII(3) of the first cause of action may be amended by deleting sub-para-

graphs (b), (c), and (d); and that sub-paragraph (e) may be amended to delete reference to said sub-paragraphs (b), (c), and (d)."

And on the left margin of this I wrote in pencil "Okay." The next paragraph of the stipulation:

"b. That the following documents relating to [79] defendant David Diamond may be admitted in evidence without the necessity of a foundation being laid:"

And I have penned in on the margin of that:

"No waiver as to relevance or materiality."

Document 1 is:

"Petition for Naturalization, No. 112600," and then in parentheses "Original."

Paragraph 2 reads:

"Alien registration form 4981212.

"3. Application for a Certificate of Arrival and preliminary form for Petition for Naturalization and supplement thereto.

"4. Petition for Naturalization No. 112600 (duplicate).

"5. Certificate of Citizenship, No. 5850343 (duplicate).

"c. That copies of the following books and documents may be received in evidence in lieu of the originals:"

and I have penned at the margin here "No objection to copies without—" and I abbreviated that: "W. O.".

"Without waiver as to any other grounds of objection."

"1. 'Two Decades of Progress'—1939.

"2. 'Young Communist League Yearbook of [80] California'—1937.

"3. 'Foundations of Leninism' by Joseph Stalin.

"4. "'Left Wing'' Communism, an Infantile Disorder' by V. I. Lenin.

"5. 'The Way Out, a Program for American Labor' Manifesto and Principal Resolutions adopted by the Eighth Convention of the Communist Party of the U.S.A. held in April, 1934.

"6. 'Program of the Communist International, together with its Constitution,' adopted Sept. 1, 1928.

"7. 'The Communist Party in Act—' "

Is that act or action?

Mr. Dooley: It should be "in Action" and then end the quote and after "Action" by Alex Bittelman.

"8. 'The Communist Manifesto' by Karl Marx and Friedrich Engels.

"9. 'The Constitution and By-Laws of the Communist Party of the United States of America' adopted May, 1938.

"10. 'The Struggle Against Imperialist War and the Tasks of the Communists' Resolution of the Sixth World Congress of the Communist International, July-August, 1928. [81]

"11. 'Why Communism? Plain Talks on Vital Problems,' by M. J. Olgin.

"12. 'The Communist Party—A Manual on Organization' by J. Peters.

"43. 'Problems of Leninism'' by Joseph Stalin.

"14. 'Stalin Speeches on the American Communist Party' delivered May, 1929.

"15. 'State and Revolution' by V. I. Lenin.

"16. 'The Paris Commune' by V. I. Lenin.

"17. 'Young Communists in Action.'

"18. 'Programme of the Young Communist International.'

"19. 'A Program for American Youth.'

"d. That each of the following statements is true:

"(1) That the name 'David Diamond' appearing in writing on the reverse side of Alien Registration Form 4981212, above the printed words 'Signature of Registrant,' was written by the defendant herein;

"(2) That the defendant herein affixed his signature to the original of Alien Registration Form 4981212 on December 24, 1940.

"(3) That the defendant herein swore to the information contained in Alien Registration Form 4981212 before a registering official.

"(4) That the name 'David Daimond' appearing in [82] writing on the lower right hand side of page 2 of Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization above the printed words 'Signature of applicant', was written by the defendant herein.

"(5) That the name 'David Diamond' appearing in writing on the lower left hand side of page 3 of Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization above the printed words 'Signature of applicant,' was written by the defendant herein.

"(6) That the name 'David Dumanus' appearing in writing on the lower right hand side of page 3 of Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization beside the printed word 'Applicant,' was written by the defendant herein.

"(7) That the defendant herein wrote the name 'David Dumanus' appearing on the lower right hand side of page 3 of Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization beside the printed word 'Applicant,' on October 7, 1943, the date indicated below said name.

"(8) That the defendant herein wrote the name 'David Dumanus' appearing on the lower right hand side [83] of page 3 of Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization beside the printed word 'Applicant,' during naturalization proceedings relating to said defendant.

"(9) That the defendant herein submitted the original of Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization to the Immigration and Naturalization Service, Los Angeles, California.

"(10) That the name 'David Dumanus' appearpearing in writing on the face of Petition for Naturalization, No. 112600 (duplicate) at the lower right hand side was written by the defendant herein.

"(11) That the defendant herein wrote the name 'David Dumanus' appearing on the face of Petition for Naturalization, No. 112600 (duplicate) at the

lower right hand side, during naturalization proceedings relating to said defendant.

"(12) That the defendant herein swore to the truthfulness of the contents of Petition for Naturalization, No. 112600 (duplicate) appearing above his signature before a Deputy Clerk of the United States District Court for the Southern District of California on October 7, 1943."

And that has been signed by counsel for the Government and by myself. [84]

I will confirm the copy with one or two little changes if it is all right with the court and then we will file it.

Mr. Gostin: Your Honor, Mr. Dooley has asked me to sign a shorter but somewhat substantially similar stipulation.

I have done so. Does your Honor wish that I read it into the record.

The Court: Yes. I would like to know what you are talking about.

Mr. Gostin: I will not read the repetitious parts:

"It is hereby stipulated by and between the parties hereto, through their respective counsel, subject to the approval of the court:

"a. That paragraph VII, Section 1 of the first cause of action may be amended to read as follows:

"'At all times since 1933 the defendant has been a member of the Communist Party.'"

The Court: You will have to speak a little louder, counsel.

Mr. Gostin: "'At all times since 1933 the defendant has been a member of the Communist Party of the United States.'"

The Court: Read that again. What is that stipulation?

Mr. Gostin: The stipulation changed the first cause of action in the complaint to change the year of allegation of membership from some other date to 1933. [85]

"That subparagraph VII (3) of the first cause of action may be amended by deleting subparagraphs (b), (c), and (d); and that subparagraph (e) may be amended to delete reference to said subparagraphs (b), (c), and (d).

"c. That the names 'Freida Slater' and 'Freda Slater' may be deleted from the pleadings whenever they appear in said pleadings.

"d. That the following documents relating to defendant Freeda Diamond may be admitted in evidence without the necessity of foundation being laid,"

and then we have added to that in ink:

"That no other objections thereto are waived."

"1. Petition for Naturalization No. 116085 (original).

"2. Alien Registration Form 5812590.

"3. Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization.

"4. Petition for Naturalization No. 116085 (duplicate).

"5. Certificate of Citizenship, No. 6177029 (duplicate).

"6. Note of immigration official dated January 17, 1944.

"7. Notes of immigration officials dated April [86] 3, 1944 and April 4, 1944.

"8. Document dated November 11, 1943, file No. 23-66179 addressed to Application Examination Section (DF-115).

"e. That copies of the following books and documents may be received in evidence in lieu of the originals,"

and we have added the:

"Stipulation extends only to use of copies. No other objections are waived."

And then we have repeated exactly the 19 documents read in the prior stipulation.

That is the end of our stipulation and it has been signed by Mr. Dooley and myself.

May I present it now to your Honor?

The Court: You may file it with the clerk.

Mr. Gostin: There is one further thing I would like to call the court's attention to at this time.

Mr. Dooley and I are both engaged Thursday morning before the United States Court of Appeals in oral argument.

I notice we are No. 1 on the calendar. However, we anticipate it might take most of the morning. We wanted to let the court know of that fact as soon as possible. That matter was set after the trial date was set in this action.

The Court: We have to give way to the Circuit Court. [87]

Mr. Gostin: I assumed we did, your Honor, and I wanted to inform the court of that,

The Clerk: What exhibits does that refer to? Will you give me the numbers, please?

Mr. Dooley: In the stipulation?

The Court: Counsel, where there were changes in the complaint and where it is agreed it may be amended, I think an amended complaint in conformity with this stipulation should be filed.

Mr. Dooley: You believe so?

The Court: So the court will have it before it. I can't check back and forth very well.

Mr. Brock: The only real changes were deletions of certain sections.

Mr. Dooley: In the case of David Diamond there are only three sections that were deleted.

The Court: Then I think counsel should delete them and initial them on the original complaint.

Mr. Brock: That is a practical solution.

Mr. Dooley: I will do that now in the case of Freeda Diamond. However, in addition to the deletions there are amendments as to her period of membership in the Communist Party.

The original complaint alleged 1936 through 1939 and 1943. [88]

In the amendment it is alleged that she was a member at all times since 1933.

In addition to that the plaintiff is not endeavoring to prove the use of any other name other than Florence Slater, so the names "Freida Slater" and "Freda Slater" have been deleted.

The Court: That is also true of Mr. Diamond, is it not? He is using an Americanized name.

Mr. Dooley: No. With respect to the defendant

David Diamond we still intend to prove that he also used the name of "David Thornson" and also the name of "Abe Slater" in addition to the names shown on his naturalization form.

But with respect to the defendant Freeda Diamond we only intend to prove that other than the names given on her form, she used the name of Florence Slater and the amendments indicate that fact.

The Court: In other words, I am going to have to read all these documents, am I?

Mr. Dooley: Well, with reference to the books and pamphlets during the closing argument I imagine counsel will point out to the court certain pertinent passages that each side will rely upon, both upon the documents submitted by the plaintiff and those submitted by the defendants.

They will be available if the court desires to pursue it further and if the court desires plaintiff is willing to [89] after the matter is probably taken under submission, to take each document and extract those portions that the court would like particularly brought to its attention.

Mr. Gostin: Your Honor, with reference to the documents this is the problem. There are 19 of them, some of which I was not able to secure and read myself.

Counsel and I have discussed this problem and we feel that although the documents ought to be available for the court to read in their entirety that —especially in the case where documents were unavailable, to be left as exhibits in the record and

we would like to ask the court for permission to withdraw those particular documents after your Honor has rendered a decision. We would like permission to withdraw the originals and perhaps substitute therefor certain extracts, but in the meantime to have these documents available in their entirety for your Honor to look through.

The Court: I feel that when the case is finally submitted to me I should have the documents available.

Mr. Gostin: Yes, your Honor. I would just like to have the understanding at this point if it would be possible to submit particularly a document in its entirety with permission to withdraw it after your Honor renders a decision because some of these documents were taken out of private law libraries —were taken out of private libraries and public libraries and I couldn't purchase copies to leave in the record. [90]

The Court: We will work that out, counsel.

Mr. Gostin: All right, your Honor. Thank you.

The Court: Now, which ones of those are going to be admitted in evidence?

Mr. Dooley: Your Honor, with respect to the defendant David Diamond, pursuant to the stipulation that has been entered into, plaintiffs offer in evidence Exhibits 2, 3, 4, 5, 7 and——

The Court: The documents that are stipulated to may be admitted. Isn't that true, counsel?

Mr. Brock: I think the purport of our stipulation covers that all right.

Mr. Dooley: Yes.

Mr. Brock: There is no question.

The Clerk: I am trying to find out which ones they are, Judge, so I can mark them. You said 2, 3, 5, and 7?

Mr. Dooley: 2, 3, and 4.

Mr. Brock: 4 is in.

Mr. Dooley: 5 and 7.

The Clerk: 5 and 7 and what else?

Mr. Dooley: I believe all of those of the defendant Freeda Diamond have already been admitted in evidence.

The Clerk: I don't know which ones those are.

Mr. Dooley: Those are numbered 17——

Mr. Gostin: 17 is not in, Mr. Dooley. [91]

Mr. Dooley: Well, that is included in the stipulation.

Mr. Gostin: I am sorry.

Mr. Dooley: That would include 17 and 18 which is in, I believe.

The Clerk: I am talking about the stipulation.

Mr. Dooley: The stipulation covers 17, 18, 19, 20, 22, 23, 24 and 25 as being admitted in evidence without the necessity of foundation. Now, the stipulation covers certain other documents on which no objection will be raised to copies. However, they will be offered later and after the foundation has been laid.

Now at this point, your Honor, the plaintiff offers in evidence Exhibit 1, which is an affidavit of Reuben Spicer showing good cause.

Mr. Gostin: May I see that, counsel?

Mr. Brock: Is that in both cases, Mr. Dooley?

Mr. Dooley: No. Exhibit 1 is in the case of David Diamond.

Mr. Brock: We will object to it at this time because if it has any bearing at all, the bearing can only be as a condition precedent to the right to file this action. It either has this relationship to the case or none.

If it hasn't that relationship, which I think the law clearly requires, then the fact remains it is an affidavit and hearsay and it is inadmissible. [92]

Certainly it has no probative value here.

The Court: Well, counsel, I am going to admit it and allow the plaintiff the right to amend his complaint to conform to the facts.

However, it is going to depend upon the ruling of the Supreme Court.

Mr. Brock: I think your Honor's position is sound. It seems to me it is a condition precedent by the terms of the act if it means anything.

The Court: It may or may not be. If you can guess what the Supreme Court is going to do you are doing all right.

Mr. Brock: We try to do that constantly.

The Court: I know, but sometimes we are not very successful.

Mr. Dooley: Your Honor, in that connection I would like to take the stand just for the purpose of establishing for the record that at the time the complaint was filed the affidavit was in the possession of the office of the United States Attorney, if I may in that case.

Mr. Brock: I will stipulate without conceding

the relevance of it, that Mr. Dooley would so testify. And I would further ask Mr. Dooley to stipulate that this is the first knowledge that we have had of it.

Mr. Dooley: Not the first because at the pretrial conference I believe you were advised of it. [93]

Mr. Brock: I am sorry, I withdraw that request.

Mr. Gostin: To clarify the record, you were not there at the time. You had already left, Mr. Brock. Mr. Dooley did inform me of the fact he intended to introduce it at the trial as to both defendants.

Mr. Dooley: And will you make the same stipulation that the affidavit was in my possession at the time the complaint was written with regard to Freeda Diamond and was filed? That was Exhibit 16.

Mr. Gostin: I will make the same objection to Exhibit 16 previously made by Mr. Brock, and also make the same stipulation——

The Court: I will make the same ruling. As I stated before I am waiting for the Supreme Court and I am not going to pass on this question until the Supreme Court passes upon it.

Mr. Dooley: The plaintiff offers in evidence Exhibits 1 and 16.

The Court: That is the certificates?

Mr. Dooley: The affidavits, your Honor, showing good cause.

The Court: However, counsel, in reading that Second Circuit opinion, and of course as I said before, we can't tell what the Supreme Court is going to do, whether that is jurisdictional in bringing the

action or not, but otherwise [94] I think that I can permit counsel to amend his pleadings to conform to the facts.

I don't know why they weren't included originally if you had them.

Mr. Dooley: Well, your Honor, it was a policy matter at the time not to attach them to the complaint. However, in every case the affidavits were in the presence of the United States Attorney before the complaint was filed.

Mr. Gostin: I would like to ask Mr. Dooley, through the court, if he intends to serve copies of that affidavit upon counsel?

It is true that a copy was shown to me at the time in your office at the pre-trial proceeding.

The Court: I think they should be furnished with a copy of them, counsel.

Mr. Dooley: I will do that.

Mr. Brock: I don't want to urge an objection overly long but I think there is this point, that Congress obviously had the intent that these be furnished—that these be made a part of the record so we would know what we were up against in advance—at least have something, and that this could not be cured by amending a complaint in the middle of a trial.

Of course I realize your Honor still proposes to wait until there is a ruling. [95]

The Court: I am not going to make a final ruling, counsel, on that question because if the Supreme Court rules as you hope they will rule, they will have to commence the action all over again.

Mr. Brock: I take it that is so, your Honor. Thank you, your Honor.

Mr. Dooley: I believe, your Honor, that depending that the existence of the affidavit, if anything, is the essential thing and the affidavit was in existence——

The Court: I know, but I think it is a question of whether or not it should be a part of the pleadings.

Mr. Dooley: Yes, your Honor.

The Clerk: Is the affidavit admitted?

The Court: Admitted subject to the ruling the court has made.

(The documents referred to, marked Plaintiff's Exhibits 1 and 16, were received in evidence.)

Mr. Brock: And it will be understood after we have had a chance to examine the affidavit that we may argue further on the sufficiency of it.

The Court: Yes.

Mr. Dooley: Your Honor ruled that an amended complaint should be filed incorporating the affidavits.

The Court: I think you had better wait and see what the Supreme Court is going to say about it. [96]

If it holds that the question is a jurisdictional question — if it holds that it is jurisdictional to bring the action and should be attached as part of the complaint you are going to have to start all over again.

Mr. Dooley: Yes, your Honor.

The Court: And if it holds as the judge did in the Second Circuit, he allowed a certain length of time to amend and to be filed within a certain length of time. As I remember he gave them 15 days to file it. And I presume the Supreme Court took it over because there was a conflict with the Ninth Circuit on the question.

I think it all depends on that ruling. There is no use of my trying to guess what the Supreme Court is going to do.

Mr. Dooley: Yes, your Honor.

The Court: I haven't a crystal ball.

Mr. Gostin: I wish we did have.

Mr. Dooley: Well, the plaintiff's witness, Mr. Hozman, was on the stand and I had finished the direct examination at the noon recess, so he is available for whatever cross examination counsel may have.

The Court: Do you wish to cross examine him, counsel?

Mr. Gostin: Yes, I do.

Mr. Dooley: Mr. Hozman, will you take the stand again? [97]

SAMUEL HOZMAN

called as a witness by the plaintiff, being previously sworn, resumed the stand and testified further as follows:

Cross Examination

Q. (By Mr. Gostin): Mr. Hozman, do you recall when you first were employed by the Immigration Service? A. Yes.

(Testimony of Samuel Hozman.)

Q. And what was that time?

The Court: I think he testified 1940.

The Witness: 1941.

Q. (By Mr. Gostin): Now, in January of 1944, Mr. Hozman, were you acting as a designated examiner? A. Yes.

Q. Were you also acting at times in the capacity of a preliminary examiner? A. Yes, sir.

Q. And in each capacity could you give an estimate of the approximately number of cases you were handling in an average day?

A. I would say a preliminary examiner would handle approximately, oh, 12 to 15 cases a day.

As a designated examiner I would handle approximately 30 to 40 cases per day.

Q. Would you act in both capacities on the same day [98] or would there be a period of time you acted in one capacity?

A. There were times when I acted in both capacities on the same day.

Q. Now, Mr. Hozman, I will ask you if you have any independent recollection at this time of having acted in either capacity in the case of Freeda Diamond? A. None whatsoever.

Q. And after your direct examination this morning did you at that time have any independent recollection of having acted in that case?

A. No, I do not.

Q. Am I correct then in assuming that all your testimony this morning was based upon what your invariable practice would have been in such cases?

(Testimony of Samuel Hozman.)

A. Yes, and also from my notes.

Q. Now, you examined your notes this morning, I believe? A. Yes, sir.

Q. And I think you looked at Exhibits 23 and 24. May I have those, Mr. Clerk?

(Document handed to the witness.)

Q. You have Exhibits 23 and 24 before you?

A. Yes.

Q. Are those the notes you referred to this morning? A. Yes, part of them.

Q. Are there others similar—I think there was Exhibit [99] 21 as well. May that be handed to the witness?

(Document handed to the witness.)

The Witness: Yes.

Q. (By Mr. Gostin): Do you presently recall, Mr. Hozman, if you made any other notes in 1944 concerning this case? A. No, I don't.

Q. Now, looking at your notes contained in Exhibits 21, 23 and 24, do you have any present recollection of Freeda Diamond after looking at your notes? A. No, I don't.

Q. You do recognize, however, that your own handwriting is on those notes? A. Oh, yes.

Q. And that is true, is it not, that this morning when you testified from your notes about your invariable practice that you were drawing conclusions as to certain questions that were asked based on your notes?

A. Well, as far as my invariable practice is con-

(Testimony of Samuel Hozman.)

cerned a conclusion—I was making conclusions, yes, but from the notes.

I am not sure if I understand your question.

Q. Well, my question, perhaps, is a little ambiguous. My question is this: Aren't you assuming that from what your notes said, a particular note that you have in front of you said, you must have asked a question concerning—leading up [100] to the answer that you wrote on your note, isn't that your assumption?

A. May I read the note?

Q. Yes.

A. If you are referring to Exhibit 23, this note says to investigate—this note says "Petitioner states not a member of any organization except Ladies Educational Club."

Q. Now, let me ask you a question. Based on that note, Mr. Hozman, you don't recall actually having gotten that answer, do you?

A. No, no, I wouldn't recall that.

Q. You don't recall specifically having asked a question to elicit that answer, do you?

A. No, I don't recall asking that question.

Q. Now, can you tell us——

The Court: Just a moment. How would you get that information that you put down there if you hadn't gotten it from somebody?

The Witness: I am assuming, your Honor, I must have asked the question since I have it written down.

The Court: Simply as a matter of custom?

(Testimony of Samuel Hozman.)

The Witness: Yes.

Mr. Gostin: That is what I was trying to get at. I take it then, Mr. Hozman, you cannot tell this from your recollection; what this particular file of Freeda Diamond [101] consisted of the first time it was presented to you? A. No.

Q. Now, would you tell us from the custom what would ordinarily be in this file the first time it was presented to you?

A. Yes. It would contain the form N-400. That is our preliminary application for—preliminary application for—I don't remember the exact title of that but it is form N-400.

Q. Would it contain any other documents?

A. It would contain the Certificate of Arrival, or that is, rather, a copy of the Certificate of Arrival.

It would contain the form N-405. N-405 is the triplicate copy of the Petition for Naturalization.

Sometimes it would contain the Alien Registration record. And other times we would have the transcript from the Alien Registration record.

Mr. Gostin: Mr. Clerk, would you please hand the witness Exhibit 19?

(Document handed to the witness.)

Q. (By Mr. Gostin): The Application for Certificate of Arrival, just so we are clear, Mr. Hozman, and again before I ask the next question, you don't specifically recall what you did after this witness was sworn in, do you?

A. Specifically, no.

(Testimony of Samuel Hozman.)

Q. What would your practice have been? [102]

A. After I swore them in I would ask them whether the statements that they made before the preliminary examiner were true and correct.

Q. Did you have any particular invariable form —invariable practice, that is as to the phrasing of that question?

A. No, not exactly. I would—I may rephrase it in a different manner but the question, the substance of it would always be the same.

Q. In substance you would just ask them if the answers they had previously given to the preliminary examiner were correct?

A. That is correct.

Q. But it may have been phrased differently?

A. Yes.

Q. What would you then do? Excuse me. Assuming that the answer to that question was "yes," what would you do?

A. I would examine the file to determine the length of residence that the petitioner alleged to have been in a locality and in the United States.

I would examine what documents the file actually contained—the notes and recommendations made by the preliminary examiner.

Q. Now, so far as you knew at that time was it the custom that the applicant for citizenship would have come directly to you from the preliminary examiner, the same day? [103] A. Yes.

Q. As far as you knew at that time would this

(Testimony of Samuel Hozman.)

have normally been the first time that these naturalization documents would have been examined?

A. That is correct.

Q. And checked? A. That is correct.

Q. All right. What would you have then done?

A. After I had questioned them about the statements made to the preliminary examiner and reviewed his recommendation, I would ask questions as to their residence and absences, arrests and any organizations that they may have belonged to.

Q. Now, would you have any invariable practice that you would have followed concerning the asking of those questions? A. No, no.

Q. In other words, the substance——

A. The substance was the same.

Q. The substance is what you just testified to?

A. Yes, sir.

Q. You may have worded the question quite differently? A. Yes, that is true.

Q. And of course you don't recall how you worded those questions in this case, do you?

A. No, no.

Q. Now, would you please look at the exhibits you have [104] in front of you and tell me—on the desk in front of you, and tell me if you have all the exhibits that would normally be in the file when it first came to you?

A. The Alien Registration Record is not here.

Q. Would that normally be in the file?

A. As I stated, Alien Registration Records or a transcript from the Alien Registration Record.

(Testimony of Samuel Hozman.)

Q. Do you happen to know in this particular case which of those documents, if any, were in the file when it was first presented to you?

A. From the notes I made, yes, I do.

Q. And from your notes what do you assume was in the file at that time?

A. The transcript of the Alien Registration Record.

Q. I am trying to look at the exhibit numbers so I can present it to you.

Mr. Dooley: That is 25.

Mr. Gostin: Would the clerk please hand Exhibit 25 to the witness?

(Document handed to the witness.)

Mr. Gostin: May I approach the witness, your Honor, so I may look at it, too?

The Court: Yes.

Q. (By Mr. Gostin): Now, can you tell me, Mr. Hozman, on which of these exhibits there appears, if on any of them, [105] any notation from the preliminary examiner?

A. Exhibit 21 contains the notations made by the preliminary examiner.

The Court: I am curious to know who naturalized these people. Do you know whether I did or not?

The Witness: The judge at the time, no, I don't know.

The Court: I was wondering. In all the years I have never had one of these cases that was naturalized in my court.

(Testimony of Samuel Hozman.)

Mr. Gostin: I don't know if any of these——

Mr. Dooley: I will check that, your Honor.

The Court: I was just curious.

Q. (By Mr. Gostin): Now, Mr. Hozman, on Exhibit 21, on the last page, there is a great deal of writing in ink. I believe this line here states:

"Invest. re-loyalty. see A.R. Report. A.T.A."

Is that in your handwriting?

A. Yes, it is.

Q. Do you recall specifically at this point having written that?

A. No, I have no independent recollection of that.

Q. And next to that there is a red dash, red pencil apparently and it says "Okay. S.L.H." and then a date: 4-4-44. Is that in your handwriting?

A. Yes.

Q. Do you recall having written that? [106]

A. No.

Q. Would it have been your invariable practice to have written these two writings at the same time? A. No.

Q. Do you have an invariable practice concerning when these notations would have been written?

A. Yes. The first writing which states "Investigation," and that is an abbreviation. "Invest" being an abbreviation—to investigate for loyalty and "see A. R. Report attached."

That was made at the time of the filing of the petition as of January 17, 1944.

My next notation is "Okay" and then bearing the

(Testimony of Samuel Hozman.)

initials "S.L.H. 4-4-44." That was made after I received the Alien Registration Report.

Q. So if I understand your testimony this morning and your testimony now, Mr. Hozman, this Exhibit 25 was in the Freeda Diamond file when it was first presented to you, is that correct?

A. That is right.

Q. And as I understood what you are saying there was something on that form that led you to make that January notation? A. Right.

The Court: What was there on the form that caused you to write that? [107]

The Witness: Under item 11 it states "Affiliations" and it contains the notation or, that is a typewritten excerpt: "National political organizations" such as Silver Shirts, American League for Peace and Democracy—that was the notation that led me to ask for a further investigation.

Q. (By Mr. Gostin): Now, Mr. Hozman, that form, this Exhibit 25 would ordinarily have been in the file when first presented to the preliminary examiner as well, would it not? A. Yes.

Q. Did you notice when the file first was presented to you it contained any note purportedly signed by a preliminary examiner concerning this Exhibit 25?

A. No, except—no separate memorandum except it is noted on Exhibit 21—that is the back of the triplicate form——

Q. Will you point out to me, please, Mr. Hozman, what writing on that form indicates to you

(Testimony of Samuel Hozman.)

that there were certain comments by the preliminary examiner?

A. The comments made by the preliminary examiner under the—well, the wording or the printing "anarchist or subversive." He has a written notation "no," and under—on the next block as to the question "Attachments to constitution" he has written "yes."

Q. Do you recognize the handwriting, Mr. Hozman, of the preliminary examiner? [108]

A. Yes.

Q. Whose handwriting is that?

A. Mr. Roy L. Wakefield.

Q. Now, if I understand you correctly, the normal practice would have been for that Exhibit 21 and 25, both to have been in the immigration file, not only when they were first presented to you as a designated examiner, but also when they were first presented to the preliminary examiner?

A. In this particular case they were.

Q. And that notation on Exhibit 21 indicated to you that there was no question in the mind of the preliminary examiner concerning the affiliation with subversive organizations, is that correct?

A. Well, from his note he has indicated he had —I can't say what he had in mind, but from his notes he has indicated "no" to any anarchist or subversive organization that he had questioned them as to that phase, and that he had written "yes" as to their attachment indicating to me that he had questioned them on those two subjects.

(Testimony of Samuel Hozman.)

Q. Now, when form 21 and 25 were presented to you can you first tell us—let me ask you this at this point. After these questions do you now have any independent recollection of what you actually did in this case? A. No, I don't.

Q. What would your invariable practice have been when [109] these documents had been presented to you?

Mr. Dooley: I object to that on the ground that the question has been asked and answered. He has gone through this procedure many times.

Mr. Gostin: I think you are right, Mr. Dooley. Let me tie it down a bit more.

The Court: I think it is clear, counsel, that this witness is testifying entirely from custom and practice.

Mr. Gostin: Yes, I understand that, but I am trying to get to the point now after he noticed Exhibit 25 saying one thing and apparently he is saying that Exhibit 21 indicated something else to him. I wanted to know what he did.

Let me ask the question this way:

Q. Mr. Hozman, did you feel that there was any apparent conflict between some of the statements given on Exhibit 21 and some of the answers on Exhibit 25? A. Yes, I did.

The Court: And that is why you referred it to investigation?

The Witness: Yes, that is why I referred it to investigation.

(Testimony of Samuel Hozman.)

Q. (By Mr. Gostin): What else did you do besides referring the file to investigation?

A. Made my notes, made my memorandum or recommendation, rather, and that is all I did in that particular case at that [110] time.

Q. Did you make any recommendation that a police report be obtained for this defendant?

A. I see no notes that I made to that effect, no.

Q. Is it possible that you did so?

A. It is possible but I don't have any evidence of it here.

Q. Now, I take it you received the file back from investigation sometime afterward, is that correct? A. Yes, I did.

Q. And when that file was returned to you did it contain any additional material?

A. Yes, it did.

Q. And what was the additional material?

A. The Alien Registration Report.

Q. That is Exhibit 18, I believe. May that be handed to the witness?

(Document handed to the witness.)

The Witness: Yes.

Q. (By Mr. Gostin): Now, when that file was returned to you with the Alien Registration Report in it, will you tell us what you normally would have done?

A. I would have examined the Alien Registration Report and note what information was contained therein and if the information was any different than that to which the petitioner [111] had

(Testimony of Samuel Hozman.)

already testified to, then I would have recalled her for further questioning.

If it did not contain any other information or it seemed to be in conformity to which she had already testified I would not have called her in again.

Q. Do you know whether or not you did call her in again?

A. No, I apparently did not call her in.

Q. At least your notes do not indicate that you did? A. That is right.

Q. However, the file was in the hands of investigation for approximately three months, wasn't it?

A. I don't know.

Mr. Dooley: I object to that on the ground the files—I object to that on the ground it is assuming something not in evidence, that the files were in the hands of investigation for three months.

The Court: I don't think that is material one way or the other but I will permit him to answer.

The Witness: I don't know whether it ever went to investigation from the memorandums contained in the file. I would say that it did not.

Q. (By Mr. Gostin): Your memorandums you are talking about?

A. No. I would say from the notes contained in the file [112] and the writings contained in the file, I would say that it did not go.

Q. Are they your notes, is what I am talking about. A. Notes, not all my notes.

Mr. Gostin: I move that be stricken, your Honor.

(Testimony of Samuel Hozman.)

The Court: You asked for it, counsel.

Mr. Gostin: I asked if they went to investigation and he said "not from the notes in the file—they were not his notes."

The Court: His only answer could be he doesn't know.

Mr. Gostin: I would accept that answer but that wasn't the answer given.

The Witness: I don't know.

Q. (By Mr. Gostin): Did you ever yourself work in investigation in the Immigration Service?

A. I did not.

Q. At the time you received—excuse me, I will strike that.

You stated that you recommended the file in January for investigation and what did you then do with the file physically?

A. It would normally go at the end of the day—they would go to one of the file clerks to file and route to the various departments or sections where it should go.

Q. I understood you to say about three months later, in April, this file came back to you? [113]

A. Yes.

Q. And that is when it had the Alien Registration form in it? A. Right.

Q. At that time when the file was returned to you, were you familiar with the organization The National Workers Order?

A. No, I was not.

Q. You did not know what that organization

(Testimony of Samuel Hozman.)

was? A. No, I did not.

Q. Did you call the applicant in to discuss the matter with her?

The Court: Counsel, he testified he didn't call her back.

Mr. Gostin: I think your Honor is correct. You did cover that before.

Q. (By Mr. Gostin): Did you make any further investigation yourself to determine what that organization was? A. No, I did not.

Q. As I understand you then, after that file was returned to you with the Alien Registration Report you recommended the granting of citizenship at that time?

A. Yes. It appeared to me that her testimony——

The Court: You recommended it, didn't you?

The Witness: I recommended it, yes.

Q. (By Mr. Gostin): And you made no further effort to [114] find out about this organization or check it with her prior testimony?

A. No. I had no reason to do so.

The Court: May I ask when did you start—I notice in some of these cases you asked the question as to whether they belonged to any subversive organization. Was that after that date?

The Witness: Oh, gosh, yes. I think it was sometime in 1947 or 1948 that we started.

Mr. Gostin: I am not sure I understood your Honor's question.

The Court: I have noticed in classes of natural-

(Testimony of Samuel Hozman.)

ization that very often before they are presented to the court the question is asked whether in their examination they have been asked the question of whether they belonged to any subversive organization and I just asked him when they started that and his answer was after this date.

Mr. Gostin: I see. I have no further questions of this witness.

Redirect Examination

Q. (By Mr. Dooley): Now, Mr. Hozman, on October—on January—I am sorry, on April 4, 1944 did you consider the Singing Chorus, International Workers Order, a subversive organization?

A. No, I did not. [115]

Mr. Gostin: I am sorry, your Honor. I would like to have the answer stricken for the purpose of objecting to the question.

I think that calls clearly for a conclusion of the witness—"do you consider."

The Court: Isn't that the same, virtually the same question that you asked?

Mr. Gostin: I don't believe so, your Honor. I don't recall the exact phrasing. I wasn't trying to get what he personally considered. What I was trying to get at was instructions—what instructions there would have been, but I may not have framed the question that way.

Mr. Dooley: I believe the question goes along the same line as the questioning of Mr. Gostin.

The Court: I thought you asked that question. You asked him if he knew and he testified he didn't.

(Testimony of Samuel Hozman.)

Mr. Gostin: That may be correct, your Honor.

The Court: If he has already answered the question why should you ask it again.

Mr. Dooley: I don't think the direct question was asked, but questions along that line were asked and that is why I was going to bring the direct question out to Mr. Hozman which would clarify his testimony and his actions on April 4, 1944.

Q. (By Mr. Dooley): Now, in the exhibits that you have before you, Mr. Hozman, which are Exhibits 18, 21, 23, 24 and 25, [116] is there any notation on those exhibits which would indicate to you that the matter did not go to investigation?

Mr. Gostin: I object, your Honor. That calls for a conclusion of the witness.

The Court: You asked if it went to investigation.

Mr. Gostin: I asked him if he knew.

The Court: And he says he doesn't know.

Mr. Gostin: That is correct.

The Court: He answered he didn't think it did but I asked him the same question and now counsel is asking what he bases that statement on. Wouldn't that be proper?

Mr. Gostin: That would be proper, your Honor.

The Court: If there is anything in his notes to indicate it.

Mr. Gostin: In his notations, yes, sir. But, as I understand it, the notes were not his handwriting—were not in his handwriting. If the questions are limited to his notations it would be a good question.

(Testimony of Samuel Hozman.)

Any notations there in his handwriting that he recognizes. He answered the question that he doesn't know whether it went through investigation or not. I don't know what more you want. It seems to me he has already answered the question. He says he doesn't know.

Mr. Dooley: I wanted the witness to point to the matters in his notes and I believe he can indicate what is contained [117] on the notes that are in evidence.

The Court: I don't know what the term "whether it went to investigation" is anyhow, counsel.

Mr. Dooley: Well, I don't either, your Honor, but counsel is relying upon the lack, I believe, of investigation. I feel it is immaterial but I was trying to rebut their particular theory of the case.

Mr. Brock: Our position is that we are hearing a fraud situation essentially however you look at it, and that part of what the Government must show is a reliance on the part of the governmental agencies and I think it does come within the issue whether he had a right to rely and whether they did in fact rely. That is our theory. I don't want to keep it from the court. We have tried to make it clear throughout.

The Court: I will hold the question is immaterial, counsel.

Mr. Dooley: Thank you, your Honor. No further questions.

Mr. Brock: No questions.

The Court: Call your next witness.

Mr. Dooley: The plaintiff calls as its next witness Mr. Roy L. Wakefield.

The Court: We will take our afternoon recess at this time of five minutes, gentlemen.

(Short recess.)

The Court: You may proceed. [118]

ROY L. WAKEFIELD

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Roy L. Wakefield.

Direct Examination

Q. (By Mr. Dooley): Where do you reside, Mr. Wakefield? A. Long Beach, California.

Q. And at what address?

A. 4228 East Sixth Street.

Q. And what is your business or profession?

A. I am an attorney with the Founders Insurance Company of Los Angeles.

Q. And on January 7, 1944 what was your business or profession?

A. Naturalization examiner.

Q. On January 17, 1944, what was your business or profession?

A. Well, I assume that date is within the period of my employment by the Service. It was—I made the connection I believe in 1943 and in 1944—if the date is 1944 then I was with the Service.

Q. How long had you been with the Immigra-

(Testimony of Roy L. Wakefield.)

tion and Naturalization Service on January 17, 1944? [119]

A. Well, as near as I can recollect without having checked any records, it was sometime in '43 that I was appointed.

Mr. Dooley: Will the clerk give the witness Exhibits 19 and 23?

(Documents handed to the witness.)

The Witness: I have Exhibit 19.

Q. (By Mr. Dooley): Will you look at Exhibit 19, Mr. Wakefield, and tell the court whether your signature appears on that exhibit?

A. It does.

Q. And where on that exhibit does your signature appear?

A. I see it here in a box at the lower left-hand corner.

Q. And in what capacity did you sign that exhibit, Mr. Wakefield?

A. As a preliminary examiner.

Q. And on what date was that?

A. I don't see a date on this document—oh, yes, here it is in my handwriting. January 17, 1944.

Q. Now, on January 17, 1944 in your examination of applicants as preliminary examiner, did you have a practice with regard to placing the applicant under oath? A. I did.

Q. And was that practice invariable?

A. It was. [120]

Q. And what was that practice?

(Testimony of Roy L. Wakefield.)

A. I swore the applicant as he or she entered my office and before they were seated.

Q. And did you swear the applicant in the case of—the applicant in the case of Exhibit 19?

A. One Freeda Diamond. I did.

Q. Now, on January 17, 1944, in your examination of applicants as preliminary examiner, did you have or follow a method of questioning the applicants? A. I did.

Q. And was that method followed in every case?

A. More or less.

Q. What was that method?

Mr. Gostin: Object if it was not invariable. If it was not invariable I don't think he can testify to it.

The Court: Objection overruled.

Q. (By Mr. Dooley): You may answer the question.

A. I frequently if not generally started in with asking questions at the very outset relative to their acquaintance with our form of government, and then got into taking down from the beginning to the end of the form that I had here, that I checked to make whatever corrections were necessary before the application was typed and sent in for the review by the hearing examiner.

The Court: Is that a N-404? [121]

Mr. Dooley: That is N-400, I believe.

The Court: N-400?

Mr. Dooley: Yes, your Honor.

The Witness: Well, there is a number down here, 1611311-1.

(Testimony of Roy L. Wakefield.)

The Court: Did you make it a practice or custom to ask each one of the questions set forth in that form?

The Witness: I did. I reviewed each question. The information was supplied and it was my duty to ascertain that the answers or the information appearing was correct and to make whatever corrections were indicated.

The Court: Would they bring in that form all filled out to you?

The Witness: No, they did not. As I recall the practice there was a file that was made up relative to the applicants who were in our waiting room and when I was through with an examination as a preliminary examiner, I helped myself to the next one and called that name whereupon the applicant would follow me into the office.

The Court: Would they come in with any papers filled out at all?

The Witness: I don't recall that the applicant brought with him or her any papers. I think the papers were all in our office.

The Court: Well, was that form filled out in anybody's handwriting that you know? [122]

The Court: It is signed by Freeda Diamond. It is typewritten. Where it was prepared I do not know, but it had been submitted to the Service some date in advance of the hearing or the hearing for filing of the application.

Q. (By Mr. Dooley): Now, in your examination of the applicant, referring to item 28 on page

(Testimony of Roy L. Wakefield.)

2 of Exhibit 19, did you have a practice with regard to questioning applicants on that question, and this question reads for the record:

"Are you a believer in anarchy or the unlawful damage, injury or destruction of property or sabotage," and the other portion reads:

"Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?"

The question now is did you have a practice with regard to asking applicants concerning organizations? A. I did.

Q. And what was that practice?

A. Every applicant that appeared before me during my service was asked whether or not he or she was a member of any Communist Party; whether or not they were members of organizations whose activities were subversive to the interests of the Government of the United States. And they made their answers to those questions.

Q. Now, referring to item 1 on page 3 of Exhibit 19 [123] which reads:

"My full, true and correct name is,"

and in small letters underneath,

"full, and true name without abbreviation and any other name which has been used must appear here."

Now, had the applicant——

(Testimony of Roy L. Wakefield.)

The Court: What answer was given to that question? That is what I want to know.

Mr. Dooley: What was that?

The Court: I haven't the exhibit before me. What answer was given to that question?

Mr. Dooley: The answer given is "Freeda Diamond."

The Court: I mean the other question that relates to subversive activities.

Mr. Dooley: The answer to the question, "Are you a believer in anarchy or the unlawful damage, injury or destruction of property or sabotage," the answer is "no."

And: "Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country," and the answer is "no."

Q. (By Mr. Dooley): Is that correct and does it appear in the original, Mr. Wakefield?

A. Well, this exhibit — I don't see where my finding is entered. [124]

Q. That is page 2 that I was reading from.

A. Oh, here it is. That was question 28.

Q. Item 28?

A. Yes. The answer is "no" in both parts.

The Court: Was it your invariable custom to ask that question?

The Witness: I did in the case of every applicant whom I examined.

Q. (By Mr. Dooley): Now, with respect to item 1 on page 3, that is the following page——

(Testimony of Roy L. Wakefield.)

The Court: There is no question about the names, counsel.

Mr. Dooley: Well, I believe there is, your Honor, because we have an allegation in the complaint that she failed to disclose that she had previously been known by the name of "Florence Slater." There are other names but they have been deleted and we are only relying upon "Florence Slater" as the name that she failed to disclose. I simply want to make sure that the naturalization examiner dealt with that particular question, too.

The Court: Very well.

Q. (By Mr. Dooley): Now, had the applicant given you a name other than the names which appear on item 1, page 3, which are "Freeda Diamond, Mae Schlomowitz," what would you have done?

The Court: I think that calls for a conclusion of the [125] witness, counsel. I think I can reach it another way if counsel will permit. Did you insert in there the name that the applicant gave you?

The Witness: I did.

Q. (By Mr. Dooley): And did you have a practice, Mr. Wakefield, with regard to asking question 1? In what manner did you ask that question?

A. Well, I inquired what name or names the applicant had gone by and then ascertained what her maiden name was.

Q. Now, Mr. Wakefield, I notice on Exhibit 19 there is certain handwriting inserted. Do you know whose handwriting that is? A. I do.

(Testimony of Roy L. Wakefield.)

Q. Whose handwriting is that? A. Mine.

Q. And what was the purpose of your inserting that handwriting?

A. To show all names that this applicant had been known by at one time or another.

Q. You are referring now to item 1?

A. Right.

Q. And the words "Mae Schlomowitz is in your handwriting? A. It is.

Q. And the other handwriting on Exhibit 19, is that [126] your handwriting?

A. All handwriting is mine except for the signature of the applicant.

Q. And what was the purpose of your inserting the other handwriting which appears on this exhibit?

A. To make corrections or amplifications.

Q. And after the corrections were made what did you do?

A. Well, after the examination was concluded the applicant was told to wait in the waiting room until her name was called.

I took the papers to the front end of our office where there was a stenographic department, and placed them on the pile so that in its proper order it would be eventually typed and then referred to the hearing room.

Q. I refer you to the signature "Freeda Diamond" which appears on the lower right-hand side of page 3 of Exhibit 19 and ask you whether that signature was written in your presence?

(Testimony of Roy L. Wakefield.)

A. It was.

Q. And what was the purpose of that signature?

A. The block in which the signature appears reads:

"Do not fill in blank below corrections numbered 1 to No. 10."

The numbers 1 to 10 in my handwriting in this preliminary form for Petition for Naturalization and N-400 were made by me or at my request and then the printed word "Applicant" and [127] the written signature "Freeda Diamond," below that the date January 17, 1944.

Q. Now, to what do the corrections numbered 1 to 10 refer?

A. Either corrections or amplifications in the information supplied by this questionnaire.

Q. Did you indicate on Exhibit 19 the corrections made? A. I did in my handwriting.

Q. In what manner?

A. By writing the appropriate words or corrections.

The Court: Did you put the handwriting in before or after she had signed it?

The Witness: Before she had signed it. The signing by Freeda Diamond was not until I had ascertained the number of corrections and until my work on it was done.

Q. (By Mr. Dooley): Now, Mr. Wakefield, will you please examine Exhibit 21 and tell the court whether your signature appears on that document.

(Testimony of Roy L. Wakefield.)

And Exhibit 21, for the record, purports to be a Petition for Naturalization, triplicate form.

The Witness: This apparently is our office copy and my signature does appear.

Q. (By Mr. Dooley): Where?

A. At the bottom or near the bottom on the last page or on the back of it.

Q. And in what capacity did you sign this exhibit? [128] A. Preliminary examiner.

Q. I notice, Mr. Wakefield, on this exhibit, Exhibit 19 and Exhibit 21 you have: "Recommendation of preliminary examiner continued."

For what reason did you continue this application?

The Court: Have you any personal recollection of this transaction?

The Witness: I would say that I do have based on my handwriting and what it says. I know that I examined—that I did this work.

The Court: When you say "continued" do you know why you did that at that time?

The Witness: If I may read my notes I may be able to ascertain that. It has been a long time and I wasn't an examiner for too many years.

Mr. Gostin: Then I raise the objection, your Honor, if the witness does not have his memory refreshed by looking at the note then I think the note will speak for itself.

The Court: Will the notes refresh your memory?

The Witness: They will, I assume.

Q. (By Mr. Dooley): In that connection I would

(Testimony of Roy L. Wakefield.)

like to mention past recorded recollection, where a witness has in the past written something down he may testify even though he has no present independent recollection of it, and on that basis——

The Court: But I am trying to ascertain whether or not he has any memorandum that will refresh his memory as to why he continued it.

The Witness: Will you state the question again?

The Court: You have the word "continued" there. Do you know why you put that word there?

The Witness: I do, having refreshed my recollection.

The Court: What was the reason?

The Witness: The witness said she was going to apply for a reissue of the naturalization certificate immediately. Apparently there was some question about a witness who appeared for this applicant, about the sufficiency of her evidence of citizenship.

The Court: This has nothing to do with this case, has it?

Mr. Dooley: Yes, your Honor, because I want to bring out that the only reason for which the preliminary examiner continued the matter and to show that it wasn't continued for reasons for which the present denaturalization proceedings were instituted.

The Court: He just testified why he continued it.

Mr. Dooley: Yes, your Honor. That is true.

Q. (By Mr. Dooley): Now, Mr. Wakefield, had there been any other reason besides the reason which you have indicated and which appears on the

(Testimony of Roy L. Wakefield.)

Petition for Naturalization, triplicate, Exhibit 21? Would any indication of that reason have [130] been placed on this exhibit? A. It would.

Mr. Gostin: Object to that as calling for a conclusion and is a hypothetical question.

The Court: I don't know if they are in the notes or not, counsel. I haven't seen the exhibit.

As I understand, you have no personal recollection of this except by your notes?

The Witness: That is right.

The Court: So it would have to show by some memorandum he put on there.

Mr. Gostin: Then shouldn't my objection be sustained and the question reworded?

The Court: Yes. If you have any memorandum on that will you so state?

The Witness: That is the only note and as far as I am aware on this examination, the only reason for my marking "Continued."

Q. (By Mr. Dooley): Did you have a practice with regard to matters which were continued as far as making indications on the Petition for Naturalization triplicate?

A. An explanation was endorsed on the margin somewhere—the reason for the postponement.

Q. Now, Mr. Wakefield, other than your signature, what other matters on Exhibit 21 are in your handwriting? [131]

A. There is no handwriting on the face of the duplicate or triplicate copy of the typed Petition for Naturalization, but on the back there is a form

(Testimony of Roy L. Wakefield.)

that has certain questions and certain handwriting placed there by me—all of which—well, I will withdraw "all of which." The most of which is in my handwriting.

Q. And what portions are not in your handwriting? That might make it easier.

A. Well, I see up here in the upper third of this form—it looks like an abbreviation for "Investigate re: Loyalty. See A. R. Report. Alien Registration Report attached." And then the "Okay" and initials and date and so forth.

That is not in my handwriting.

The Court: Do you know in whose handwriting it is?

The Witness: Well, I was here in the courtroom when Mr. Hozman indicated that it was his handwriting.

Without his having said so I wouldn't—and without knowing that he was the hearing examiner, I wouldn't recall the initials, but I know very well that it was Sam Hozman.

Q. (By Mr. Dooley): Now, referring you to near the middle of the page to the word "okay" on central office memo and R. L. W. 3/24/44, is that in your handwriting? A. It is.

Q. And what does that mean?

A. That quotation relates to a memorandum by —my [132] verification of, it looks like s-o-f-i or s-o-f-f-e-r-s and N over C and that means Naturalization Certification and then I have in brackets "second witness" and then there are the words "ink

(Testimony of Roy L. Wakefield.)

faded out" and then "seal is okay" and then following that is "Griffin says 'write letter.' "

Griffin was the chief naturalization examiner and then there is a dash here where I put "okay" and then "Central office memo attached R.L.W. 3/24/44."

That means that I saw Central Office memo which cleared the matter.

Q. Now, had the applicant told you that she was or had been a member of the Communist Party what action would you have taken?

Mr. Gostin: Objection, your Honor. That calls for a conclusion of the witness.

The Court: I think that does call for a conclusion, counsel.

Mr. Dooley: Let me see. Maybe I can rephrase the question.

The Court: What action would he take?

Q. (By Mr. Dooley): Was it customary——

The Court: It is like asking me what I am going to do in this case.

Mr. Dooley: Yes, I can see that, your Honor.

Q. (By Mr. Dooley): However, did you have a customary [133] procedure on January 17, 1944?

A. There was a procedure that I would have followed.

Q. And what was the customary procedure at that time when it was disclosed that an individual was a member of the Communist Party?

A. No. 1, my recommendation would be no and I would have submitted the reason.

(Testimony of Roy L. Wakefield.)

Mr. Dooley: No further questions, your Honor.

Cross Examination

Q. (By Mr. Gostin): Mr. Wakefield, am I correct in assuming that your direct testimony also was not based on any independent recollection you have now, but is based on your handwriting and the files plus your general customary practice?

A. Having seen this document my knowledge is proof positive as far as I am concerned that I did that in this—that I did make this examination.

Q. Now, do you recall specifically interviewing this applicant for citizenship?

A. There is only one thing that I have any recollection at all of and that has to do with the name "Diamond." There was—I have a feeling that the name "Diamond" made an impression but that is all.

Q. But other than that the fact that the name made somewhat of an impression on you, the rest of your testimony [134] was based on your handwritten comments and your invariable practice, is that right? A. Exactly.

Q. Now, how long were you employed by the Immigration Service as an examiner?

A. Well, I was a wartime employee and after the war—I was one of the wartime employees who was dispensed with. It is my recollection that I was with the Service something over three years. Just exactly how long I don't remember.

Q. Now, is it correct that at the time this file

(Testimony of Roy L. Wakefield.)

was first presented to you it contained an Alien Registration Form?

A. Well, my memory is vague. I know that—it seems to me that these applicants had an Alien Registration card of some kind on their person and what else there may have been I don't recall.

It seems to me that they were supposed to produce their registration card.

Q. You are referring now to the Alien Registration card that all aliens at that time were required to carry on their person? A. That is right.

Q. May I see the documents, please, those that have your handwriting on them?

The Court: Had to carry those cards like they require [135] us to carry our driver's license.

Mr. Gostin: That is right, your Honor. I recall that, your Honor.

Q. (By Mr. Gostin): You are showing me Exhibit 21 and your handwriting appears on the last page of that exhibit, is that correct?

A. That is my handwriting, yes.

Q. That is most of the handwritten items here?

A. I sometimes print and I sometimes write. My writing is terrible and my printing is less terrible.

Q. We won't hold that against you. I just want to make sure that the ink writing——

A. That is my ink and my writing.

Q. I am not sure if I recall your testimony concerning this investigation re loyalty. Was that your writing or someone else's writing?

A. That is not my writing.

(Testimony of Roy L. Wakefield.)

Q. How many times did you see this applicant for citizenship?

A. I would say offhand that I saw her the one time, at the time she appeared for preparation of her petition.

Without examining that carefully I don't see any other indication that I ever saw this applicant either before or afterward.

Q. I will ask you to look again at Exhibit 25. Was this [136] item in the file at the time it was presented to you?

A. I don't know. My memory wouldn't serve me on that. As to what the file might have contained.

Q. Now, you discussed briefly the central office memo. What is that? What do you mean by "central office memo?" A. Central office memo?

Q. "Central" was the word unless I misheard it.

A. Central office memo?

Q. Yes.

A. That would be a memorandum from the central office relating to an inquiry through channels to clarify the question raised with respect to the witness' naturalization certificate.

Q. That is a memorandum that would have been addressed to you or might it be something——

A. It might not be addressed to me. It would be addressed to our Los Angeles branch of the department—maybe to a department head. I wouldn't know offhand. I would have to see it to identify it.

Q. Well, from your knowledge at the time, were

(Testimony of Roy L. Wakefield.)

these memorandums that just came in from outside the office to the Los Angeles office?

A. They came from the central office of the Immigration Service.

Q. They weren't any memos that may also have been sent to the central office? [137]

A. Whether that document was supported with the correspondence of inquiry I don't know.

Q. Now it is true, is it not, that your practice at that time, in 1943 and 1944, was to recommend for further investigation applicants whose petitions indicated the possibility of some organizational connection or organizations that you might have considered subversive at the time?

A. If there was any question in my mind I would make a recommendation for investigation or at least I would make notes or I would confer with someone higher up.

Q. Did you receive any instructions, either written or oral, concerning what practice you should follow in such instances?

A. I would have no way of answering that except that we had many regulations—we had much advice but——

Q. Well, let me put it this way. The regulations were changed from time to time, were they not?

A. Well, that is right.

Q. And the advice would also change from time to time? A. That is right.

Q. And therefore your invariable practice as to

(Testimony of Roy L. Wakefield.)

a particular matter might also change from time to time?

A. In my own instance there were certain things that—whether or not there were no changes during that time I was in the Service, I did certain things throughout the time of [138] my service.

Q. I see. You mean to say all the time you were employed as an examiner the advice you received remained constant, is that correct?

A. No, it is not correct.

Q. Well then, perhaps I misunderstood you.

A. We had many regulations. We had many meetings. We had many discussions but there were certain things in the routine work that I did as an examiner in which I was constant.

Q. And would that include your invariable practice as to asking questions?

A. That is right, within the scope of the questions that I asked there were certain questions that I asked every applicant.

Q. All right. Nothing further.

The Court: That is all. Call your next witness.

Mr. Dooley: Your Honor, should I proceed with the next witness I will have to ask for a short recess in order to get him here. It will probably take about five minutes.

The Court: I suppose we had better take our recess until tomorrow morning at 10:00 o'clock.

Counsel has advised me that there are depositions here of the defendants.

Mr. Dooley: That is correct, your Honor.

The Court: This matter is going to have to be submitted [139] and why can't those depositions also be submitted and deemed read by the court which will save the time of the court here. And if there are any objections in their depositions that were made by either side and either side wants to brief the matter the court will then pass on those questions.

Mr. Brock: That is quite satisfactory.

The Court: As I understand it the depositions are not lengthy.

Mr. Gostin: That is correct.

The Court: I can read them and save the time of reading them here in court. You have indicated that you want to ask certain questions of the defendants. You have also stated that the defendants have refused to answer questions on the ground of self-incrimination. It seems to me that you should brief the matter and submit points and authorities on that question.

Mr. Gostin: I might point out that a few months back in pretrial proceedings you indicated you would sustain the Government's objections in part as to questions concerning the immigration documents. And at that time, because of what your Honor stated as to why certain requests for admissions should be answered concerning those documents, that also is incorporated in the stipulation we filed earlier this afternoon.

So, at least so far all the immigration documents are [140] concerned, there is no further question because they are in evidence under the stipulation.

Mr. Brock: The court's suggestion is quite satisfactory as far as we are concerned and it will save time.

Mr. Dooley: As far as admitting the depositions that is satisfactory, your Honor, but plaintiff still feels that in a denaturalization proceeding, which the Supreme Court has said is somewhat related to a criminal proceeding, the defendants should be present in all fairness to the defendants and in all fairness to the Government.

The Court: Well, I think that that is a question I am not prepared to pass upon at this time, counsel. I think if you have any points and authorities on that we will go into it and if I feel that they should be answered I will give you time to subpoena them even if you have to turn the subpoenas over to the FBI to have them served.

Mr. Dooley: Yes, your Honor.

The Court: And on the other question I am not going to pass on it until the Supreme Court passes on it.

On the other question, gentlemen, it seems to me that it is vital to this case.

Mr. Gostin: It certainly is, your Honor.

Mr. Dooley: Well, your Honor, the depositions can be considered as being unsealed and having been received in evidence. [141]

Mr. Brock: Surely.

The Court: And deemed read.

Mr. Gostin: Yes, your Honor. So stipulated.

The Court: I will read them after you get the rest of the evidence in.

Mr Gostin: Perfectly satisfactory.

The Court: Apparently they are relying on certain books and so forth which is going to be briefed. I think Mr. Dooley knows I can read better than I can listen. I am not too good a listener.

Mr. Brock: I don't envy your Honor's task of reading all these exhibits. We can't even get most of the books.

Mr. Dooley: May I ask one more question. Mr. Brock indicated that he didn't know where his client was at present. I was wondering whether Mr. Gostin knows where his client is at present.

Mr. Gostin: No, I don't know where my client is. We saw them together the last time we saw them and that is why we sometimes mix the singular and plural up.

The Court: Well, counsel, as I said this morning that has all the appearances of collusion.

Mr. Gostin: Your Honor, I want to object to your Honor's remarks. We certainly don't feel there is any collusion involved. We consolidated the trial——

The Court: I know, but you are here and you don't know [142] where your clients are. It doesn't impress the court very seriously that they couldn't be produced. But you say you have subpoenas issued and if you turn them over to the FBI they wouldn't have any trouble locating them.

Mr. Gostin: I might add the plaintiff had sufficient time to subpoena the witnesses. We didn't know until this morning there were subpoenas out for them. There has been no attempt to contact

us or inform us that subpoenas were out for the defendants. And I agree certainly with the statement made by Mr. Brock this morning that in a civil case there is no rule that we know of where the defendants have to be present.

Mr. Brock: I might point out also it is quite understandable that a client wouldn't want to sit through a proceeding of this type.

The Court: If my citizenship were at stake I would want to be here, counsel, just the same as they wanted to be here at the time they were naturalized. It is a vital question to them. I guess it is the most important matter they have got to consider right now.

Mr. Gostin: That is true, but from our view of the case a great deal of it depends on what is in a great body of literature and I think your Honor's suggestion about perhaps briefing some of this might be helpful because it certainly has a material aspect of the case. [143]

The Court: I think the Government through the Federal Bureau of Investigation can locate these people and serve a subpoena on them.

Mr. Brock: I think the court would concede we are not obligated to help the Government make out a case.

Mr. Dooley: No. The Government doesn't wish opposing counsel to help it make out its case. However, the Government feels that it is entitled to take advantage of all of the rules of civil procedure, one of which is Rule 43(b), permitting the Government to call the opposing side as an adverse witness.

Mr. Gostin: That is correct, and I would like to clear the record for the court. At any time during the proceedings and leading up to the trial of the case, we have been working together. We have made witnesses available for deposition. We have done many things informally. We have never had any disagreements but we have never been able to reach the point where we couldn't work together. And as I say this is all news to us that a subpoena was even issued for the defendants. I want that made clear to the court. There was no collusion, as your Honor suggested, or anything of that sort.

The Court: I still think there is collusion, counsel.

Mr. Gostin: Your Honor, perhaps just to make the record clear, I am going to also make the motion in this case, although this afternoon we are saying it with smiles, but I [141] think your Honor's position would prejudice us and I would want the record to show——

The Court: There is no jury present, counsel.

Mr. Gostin: That is true.

The Court: We have only gone into preliminary matters. So far I don't know what the facts are in this case. I don't know what the Government is going to be able to prove. I don't know whether they will be able to prove a case or not.

Mr. Brock: And we propose not to help them.

The Court: That is very apparent.

Mr. Gostin: Your Honor, it is our duty as attorneys to do so, I think.

The Court: And at the same time attorneys are officers of the court.

Mr. Gostin: That is correct, your Honor. It is their duty to see that justice is done.

The Court: And to see that justice is done.

Mr. Gostin: That is absolutely correct. That is why I took an objection to your Honor's remarks concerning collusion and sharp practices. I felt that they weren't justified under the circumstances.

Mr. Brock: And I think the record should show that the Government has carefully refused in this case to disclose to us any witnesses or anything else to help us see that justice is done. [145]

Mr. Dooley: The witnesses have been disclosed.

Mr. Gostin: Only the immigration employees.

Mr. Brock: Just those you had today.

Mr. Gostin: And we still do not know of any other witnesses.

The Court: I am interested in how much longer this case is going to take, Mr. Dooley.

Mr. Dooley: If the defendants are not available it may be possible to fin' h this week so far as the plaintiff's side is concerned.

The Court: I want to say that this court will be dark next week.

Mr. Dooley: The plaintiff will probably finish this week if the defendants are not available.

The Court: You have a pretty weak case if you can't finish it this week.

Mr. Dooley: Well, we will do our best, your Honor.

Mr. Brock: We have tried to get Mr. Dooley to dismiss it.

Mr. Gostin: And he won't do it.

The Court: Well, I don't blame you for asking him that question. I want you to have your witnesses here tomorrow morning at 10:00 o'clock and we will go ahead from there.

Mr. Dooley: Yes, your Honor, I will do that.

Mr. Gostin: Mr. Brock just asked me about Thursday [146] morning and I did mention that before.

The Court: I will make arrangements so we will not start court until you get through upstairs on Thursday morning.

Mr. Gostin: Thank you.

(Whereupon at 4:00 o'clock p.m. a recess was taken until 10:00 o'clock a.m. of the following day, Wednesday, February 29, 1956.) [147]

Wednesday, February 29, 1956—10:00 A.M.

The Court: Case on trial.

The Clerk: Consolidated cases 17,412-BH and 17,413-BH, United States of America vs. David Diamond and Freeda Diamond.

Mr. Gostin: The defendant is ready.

Mr. Brock: My defendant is ready, your Honor.

Mr. Dooley: The plaintiff is ready.

The Court: You may proceed.

Mr. Dooley: Your Honor, plaintiff calls as its next witness Mr. William Ward Kimple.

Mr. Gostin: I would like to interpose an objection to any testimony from this witness on the ground that interrogatories filed some months ago show that we asked for the names of witnesses expected to be called and the names of persons having knowledge of the facts.

The name of Mr. Kimple was not supplied to us and we have had, of course, no opportunity to take his deposition or prepare to meet his testimony.

I would like to call just one case to your Honor's attention that hasn't previously been cited, and that is May vs. Baltimore & Ohio Railroad, 17 Federal Rules Decisions, 288, wherein it is stated that the purpose of interrogatories is to enable the opposing party to prepare for trial, because a party is entitled to be informed as to what he has to meet.

That case points out that the names of witnesses and persons having knowledge of the facts were previously supplied under a different interrogatory and we feel that we are entitled to the same thing here.

In the absence of that we object to any testimony from this witness.

Mr. Brock: May it be understood I incorporate the same objection on behalf of David Diamond.

The Court: I will stay by my original ruling, gentlemen.

WILLIAM WARD KIMPLE

called as a witness on behalf of the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: William Ward Kimple.

Direct Examination

Q. (By Mr. Dooley): Where do you live, Mr. Kimple?

A. 5915 Lindenhurst Avenue, Los Angeles 36, California.

(Testimony of William Ward Kimple.)

Q. And what is your business or profession?

A. I am a retired Los Angeles police officer and I am retained on occasion by the Immigration Service for my knowledge of Communist Party activities.

Mr. Gostin: Your Honor, on the basis of that answer I [152] would further object on the ground that the court did order the names of employees of the Immigration Service turned over to us on interrogatories, and this witness' name was not so supplied.

Mr. Dooley: The court's order, if I recall and the order here is, was the naturalization examiners relating to the defendants.

Mr. Gostin: Your Honor, I don't have my copy of the order but my recollection of the court's ruling when we were in court on that, was that employees of the Immigration Service—I do not recall how it is written up in the order——

The Court: Objection is overruled.

Q. (By Mr. Dooley): Now, Mr. Kimple, were you ever a member of the Communist Party of the United States? A. I was.

Q. Where? A. In Los Angeles, California.

Q. When did you join the Communist Party of the United States? A. In July of 1928.

Q. And why did you join the Communist Party of the United States?

Mr. Gostin: Object, your Honor. That is irrelevant and immaterial.

The Court: We don't care why. [153]

(Testimony of William Ward Kimple.)

Mr. Dooley: I believe it is material in this case, your Honor, because it will throw light on the capacity and the reason why he obtained the information and the thoroughness with which he did it.

The Court: Why he joined I don't think is material.

Mr. Dooley: By that question, your Honor, I only wanted to bring out that he was only a Communist Party member in name and at the same time that he was a police officer. That is the objective and that is why I offer to prove by that question, your Honor——

Mr. Brock: It seems to me counsel is anticipating impeachment of his witness at this time.

Mr. Dooley: It is not anticipating impeachment. I would like to bring it out to show the capacity in which the witness was in the Community Party.

The Court: Well, why don't you ask him that question.

Q. (By Mr. Dooley): Were you a police officer at the time you were in the Communist Party?

A. I was, yes, sir.

Q. And how long did you remain a member of the Communist Party?

A. I was a member of the Communist Party continuously from 1928 to, I think, about September of 1939. It was in the fall of 1939.

Q. Are you now a member of the Communist Party? [154]

A. No, sir, I am not.

(Testimony of William Ward Kimple.)

Q. While in the Communist Party, Mr. Kimple, did you hold any official positions in the party?

A. I did.

Q. What positions?

A. Well, some of them were—I was a unit organizer. I was a unit literature agent. I was a unit educational director and I was the assistant to the Los Angeles County membership director.

And also I was an alternate on the control commission of the Communist Party. Those were the major jobs which I held.

Q. And during what periods of time did you hold these meetings?

A. The position of unit organizer I held pretty much steadily from about 1929 or late in 1928 up until about 1938. There may have been a break in there for short times and then the positions of unit literature and unit educational director were just for short periods of time early in 1929 and in the position of assistant to the Los Angeles County membership director was from 1936 until the time I left the Communist Party.

The position of alternate on the control commission was also from 1936 until the time I left the Communist Party.

Q. And what were your duties as unit organizer?

A. My duties as a unit organizer were to attend the [155] unit organizers' meeting and received instructions from the higher body of the Communist Party and come back to the Communist Party unit

(Testimony of William Ward Kimple.)

and give the instructions that I had received from the earlier meeting; to organize the unit in its activities, to distribute the work, check up on all activities and plan further activities.

Basically those were the main duties.

Q. And what were your duties as unit literature agent?

A. As literature agent it was my duty to see to it that the Communist Party literature was secured and brought to the unit and unit members advised as to what literature they should read and to distribute the literature—to discuss the literature and to aid in the various drives to secure new readers for the various Communist Party publications.

Basically that was the main job as literature agent in the unit.

Q. And as assistant membership director what were your duties?

A. As assistant to the Los Angeles County membership director of the Communist Party my duties were to keep the Communist Party membership records in order; to assist in the annual registration of Communist Party members; to assist in the issuing of Communist Party membership books.

Also to assist in the semi-annual control which was a check-up in July of the dues standing of all Communist Party [156] members.

To keep the membership records divided as to units.

To prepare lists for the membership director tell-

(Testimony of William Ward Kimple.)

ing who was in the various unions, mass organizations et cetera.

Those were some of the main jobs as membership director.

Q. Now, in what manner during the periods you were in the Communist Party did you perform your duties as a police officer?

A. At all times that I was in the Communist Party I kept my commanding officer in the police department informed as to who was in the party; what they were doing, when they were doing it, why they were doing it and how they were doing it, to the best of my ability.

Q. Now, do you know the defendant David Diamond? A. I do.

Mr. Dooley: Will the clerk please give the witness Plaintiff's Exhibit 7?

(Document handed to the witness.)

Mr. Dooley: And also Exhibit 22.

(Document handed to the witness.)

Q. (By Mr. Dooley): Exhibit 7 purports to be a certificate of naturalization relating to David Diamond and Exhibit 22 purports to be a certificate of citizenship relating to the defendant Freeda Diamond.

Mr. Kimple, I ask you to look at Exhibit 7, at the [157] photograph appearing thereon, and tell the court whether you recognize the person whose photograph is on that exhibit?

A. I do. That is David Diamond whom I knew in the Communist Party in California.

Q. I ask you to look at Exhibit 22 and tell the

(Testimony of William Ward Kimple.)

court whether you recognize the person appearing on that photograph, appearing on that exhibit?

A. I do.

Q. And who is that person?

A. That is Freeda Diamond, the wife of David Diamond, whom I knew in the Communist Party in Los Angeles.

Mr. Gostin: May I have a clarification of that answer, your Honor?

Is the witness stating that he knew Freeda Diamond or the wife of David Diamond? I am unclear as to whether or not he is naming them both.

The Witness: I said that I recognize that photograph as being a photograph of Freeda Diamond whom I knew to be the wife of David Diamond, who was a member of the Communist Party in Los Angeles.

Q. (By Mr. Dooley): How long have you known the defendant David Diamond?

A. Since about 1927 or '28.

Q. And how long have you known the defendant Freeda Diamond? [158]

A. Somewhere in the early 30's—maybe '32 or '33. That is my earliest recollection of her.

Mr. Gostin: May we have the times pinned down a little more specifically, counsel?

Mr. Dooley: You can do that on cross examination.

Q. (By Mr. Dooley): Did you ever attend any meetings of the Communist Party at which the defendant David Diamond was present?

(Testimony of William Ward Kimple.)

A. I did.

Q. What meetings?

A. In 1928 I attended faction meetings of the Foster faction of the Communist Party at which David Diamond was present.

And I also attended Communist Party membership meetings at which both factions were present at which David Diamond was present.

The Court: What do you mean by "factions"?

The Witness: In 1928, your Honor, the Communist Party was split into two camps for control of the Communist Party in Los Angeles.

One group was headed by William Z. Foster and the other by Jay Lovestone and there was quite a bitter rivalry between the members.

The Court: Competition between the two?

The Witness: Yes, sir. [159]

Q. (By Mr. Dooley): And of what faction were you a member?

A. I was a member of the Foster group, sir.

Q. And of what faction was the defendant David Diamond a member of?

A. He also was a member of the Foster group.

Mr. Brock: May I object to the question and move to strike the answer for the purpose of the objection?

The Court: I can't hear, counsel.

Mr. Brock: I am very sorry. May I move to strike the answer for the purpose of an objection based on this, that the answer he was a member at

(Testimony of William Ward Kimple.)

this point constitutes nothing but a conclusion on the part of the witness.

The Court: You say he was a member. How do you know he was a member?

The Witness: Only members of the Communist Party who supported the Foster group were admitted to these meetings.

Mr. Brock: I am still taking the position that he is giving a conclusion.

The Witness: May I continue?

Mr. Brock: I am sorry, I didn't mean to interrupt.

The Witness: And he was very active in his support of Foster, taking the floor frequently and voicing himself.

Mr. Brock: I submit that this is still not evidence of membership in any sense. [160]

Mr. Dooley: If your Honor please——

Mr. Brock: May I finish? He has predicated the first conclusions upon a second conclusion and the second conclusion is that only members that were members of the Foster faction were permitted to attend. We just keep going around in a circle here.

Mr. Dooley: Your Honor, I believe that is evidence and sufficient evidence for the conclusion reached by the witness, that the meetings were such that only members of the Foster faction attended.

The witness himself was a member of the Foster faction. The defendant David Diamond was active in supporting the Foster faction as a member of that faction and the evidence certainly supports the

(Testimony of William Ward Kimple.)

conclusion of the witness that the defendant David Diamond was a member.

But even aside from that, the evidence itself is certainly strong circumstantial evidence of membership and should be permitted to remain irrespective of whether it is a conclusion.

Mr. Brock: I would concede that if the witness testified I attended certain meetings, Mr. Diamond attended those meetings and Mr. Diamond spoke or did this or did that, that is evidence that the court may draw a conclusion of membership from, but for the witness to draw a conclusion of membership from those facts is certainly usurping the court's [161] function.

The Court: I appreciate the fact, counsel, that I have to draw my own conclusions. In other words, his conclusion that he was a member—I have only heard a little bit of this testimony so far and I don't know what more he is going to testify to.

I think the fact he said he was a member is a conclusion and probably should go out.

Mr. Brock: That is all I am asking, your Honor. Thank you.

Q. (By Mr. Dooley): Now, the meetings of the Foster faction that you described, Mr. Kimple, you stated that only members of the Foster faction could attend, is that true?

The Court: How do you know that to be true?

The Witness: May I answer yours first and say yes.

Mr. Brock: I would interpose an objection to

(Testimony of William Ward Kimple.)

this and I think the court has the idea we are trying to get across. If he is going to lead up to the fact of membership he has got to do it by evidence and not by conclusions and the court's question is the question I would think has to precede all this.

The Court: Well, he stated he is a member and that only members of the Foster group could be present. I want to know why. I want to know how he knows that.

Mr. Dooley: Yes, your Honor. [162]

The Witness: A strict guard was kept at all meetings to see to it that only the known supports of the Foster group were present.

This guard was usually Frank Specter, who was the head of the Foster group here in Los Angeles, and if anyone other than a Foster supporter tried to get in they were immediately ejected.

Mr. Brock: I think we are right back on the same basis in which now we have to take from his conclusion and go to Mr. Specter's conclusion.

Mr. Dooley: Your Honor, I think the defendant is attempting to interject into the testimony——

The Court: I will overrule the objection, counsel. I will admit that the fact as to how he knows——

Mr. Brock: May I be heard? I don't want to belabor the point. I am not trying to consume time, but I assume sooner or later we will get to these points, but I would like to see the legality—I would like to see it legally and properly done here. It seems to me where we stand now Mr. Kimple is

(Testimony of William Ward Kimple.)

telling us "I went to meetings of the Foster faction," which we don't yet know much about, but I suppose we will learn. And he says, "only members of the Foster faction were admitted," and therefore everybody that was there must have been a member of the Foster group.

Now, he tells the court the real reason "I know that is [163] because Mr. Specter stood at the door and saw that only members got in." That is not evidence.

Mr. Dooley: That is evidence.

The Court: I think it is. I don't know whether you belong to any fraternal organizations but we all know that only members are admitted. For instance, if you belong to a Masonic group you would have to be a Mason to get in and you would have to have somebody vouch for you.

Mr. Brock: There is a substantial difference, of course, between a Masonic group and the Foster faction.

The Court: I admit that, I recognize that fact, but I am speaking of a secret meeting of any group, where they have certain control over those whom they admit.

I think that is some evidence. In other words, if I sat in a Masonic hall in a Masonic meeting I think I could assume the man next to me was a member of that organization the same as in the Elks.

I think it is a perfectly reasonable assumption, at least in an ordinary organization, that the person

(Testimony of William Ward Kimple.)

next to you is a member of that organization, unless it is an open meeting.

Mr. Brock: Unless it is an open meeting.

The Court: Yes. But if you go to, for example, the Elks or to the Native Sons, which I belong to, you couldn't get into their meetings unless somebody vouched for you.

Mr. Brock: I quite understand that and that is true, but [164] what I want clearly made out here is that this witness assumed that the people in the meeting were members of that faction because Mr. Specter stood at the doorway.

The Court: I think that is the only conclusion that can be drawn from this testimony.

Mr. Gostin: I was going to disagree but if your Honor feels that is the only conclusion that can be drawn I want to add——

The Court: I am not making a finding at this time but I am just explaining why I am admitting this testimony. I think it has some evidentiary value.

Even if you went to a candidate's meeting in a group that was supporting a certain candidate, if they were all supporting him a person there probably wouldn't be there for his health. In a political meeting of that kind you don't get the opposition there.

Mr. Brock: That is the unfortunate thing about political meetings.

The Court: I will agree with counsel to that extent.

(Testimony of William Ward Kimple.)

Q. (By Mr. Dooley): Now, Mr. Kimple, you mentioned membership meetings of the Communist Party. What persons were those meetings open to, were they open to the general public?

A. No, they were not.

Mr. Brock: Just a minute—I didn't mean to cut you [165] off. Had you finished? I am sorry. Let him finish before I interpose the objection. I didn't mean to be rude. Go ahead, Mr. Kimple.

The Witness: Those meetings were closed to only Communist Party members in the Los Angeles area.

Mr. Brock: I am going to interrupt again. I interpose here the objection that this is exactly the same question and answer that the court sustained an objection to as to the Foster faction.

Here we have just the bald conclusion and with nothing to support it——

The Court: How do you know that to be true?

The Witness: For membership meetings, the Communist Party members received the instructions to attend that membership meeting through their unit organizer, and a full unit would attend the membership meeting and a lookout was posted at the door to see to it that all Communist Party members got in and only the Communist Party members got in.

Mr. Gostin: Your Honor, I would like to interpose the objection to that and perhaps I will ask a clarifying question. I am still not certain as to whether the witness is testifying only to David

(Testimony of William Ward Kimple.)

Diamond or both defendants when he says he attended the meetings with the defendant. I wonder if that can be clarified.

The Court: Yes. [166]

The Witness: At this time I am referring, sir, only to David Diamond.

Q. (By Mr. Dooley): Now, did you attend any other meetings of the Communist Party at which the defendant David Diamond was present?

A. I did.

Q. What other meetings?

A. During about 1931 — 1931-1932 and maybe into 1933. I was a unit organizer at that time and weekly I attended unit organizers' meetings and much of the time Mr. Diamond was present as a unit organizer from the unit that he represented in the East Side section of the Los Angeles Communist Party.

Q. Do you know, Mr. Kimple, what persons were permitted to attend the unit organizers' meetings? A. Only the members.

Mr. Brock: May I be heard on that question. I object to the question as calling for only a yes or no answer.

The Court: Do you know?

The Witness: Yes.

Q. (By Mr. Dooley): What persons were permitted to attend?

Mr. Brock: To which I will object as asking for a conclusion on the part of the witness in the very phraseology — "were permitted to attend" which

(Testimony of William Ward Kimple.)

calls for a conclusion. I [167] think he can state what he knows.

Mr. Dooley: The witness stated that he knew and if he knows then he can tell what persons were permitted to attend. And further he can be asked how he knows but I think it is a perfectly proper factual question and whether he can give supporting reasons is a different proposition.

The Court: I think I can take care of this on cross examination.

Mr. Brock: I don't want to belabor the point but if the court feels that way may it be deemed I have a running objection?

The Court: I don't want a running objection, counsel, because there may be certain questions that may be good. But I think that this man, who has testified he was a member of the Communist Party during that period, can testify as to who were present and what activities, if any, these two parties had.

Mr. Brock: I won't quarrel with the court on that. I concede that but the point I am objecting to is his giving these conclusions as to closed meetings and so forth.

All of these things are conclusions. Counsel could ask me if I knew the moon is made of green cheese and I could say "yes" but it is still a conclusion.

The Court: If you said the moon was made of green cheese that would be a conclusion. [168]

Mr. Brock: I will interpose my objection briefly without argument.

(Testimony of William Ward Kimple.)

The Court: We haven't a jury here, counsel. I want to hear the facts.

Q. (By Mr. Dooley): What persons were permitted to attend, Mr. Kimple, the unit organizers' meetings?

Mr. Brock: Same objection.

The Court: How did you know who were permitted to attend?

The Witness: The unit organizers were instructed to attend by the organizational department of the Communist Party in Los Angeles and——

Mr. Gostin: That is hearsay.

The Witness: ——and a roll call was made at each organizers' meeting to see to it that all units were represented.

Mr. Brock: May I have an objection to this on the ground that the phrase "were instructed to attend" clearly involves hearsay?

The Court: I think it does, counsel. That part of it may go out but when he says a roll call was taken I think that is permissible.

Mr. Brock: I would concede that.

Q. (By Mr. Dooley): Mr. Kimple, as unit organizer were you instructed to attend——

A. I was.

Q. ——those meetings? [169] A. I was.

Q. Did you ever attend any other meetings of the Communist Party at which the defendant David Diamond was present? A. Yes, sir.

Q. What other meetings?

A. In 1932 I believe it was.

(Testimony of William Ward Kimple.)

There was a Communist Party membership meeting held in Long Beach at which Mr. Diamond was present.

The Court: Was that a closed meeting or open meeting?

The Witness: That was one of the tightest closed meetings the Communist Party ever held in Los Angeles, sir.

The Court: How do you know that?

The Witness: Very few Communist Party members—I was a Communist unit organizer and even I didn't know where it was.

At that Captain Hines and the Los Angeles Red Squad were stopping meetings of the Communist Party and the Communist Party here in Los Angeles was having great difficulty holding a membership meeting, so the leadership decided that they were going to fool Mr. Hines and they organized this very secret meeting.

Mr. Broek: I object to that.

The Court: Did you participate in making those arrangements? [170]

The Witness: Only to the extent that I was told to have my unit mobilized for that meeting and how to go but not where to go.

Q. (By Mr. Dooley): And where was this meeting held?

A. In Long Beach on Pine Avenue, I believe it was.

Q. And will you describe further how you got to the meeting?

(Testimony of William Ward Kimple.)

A. Yes. I was told that a certain Communist Party member would pick four of us up in his automobile and take care of us.

We got into this car and we were told that now we were on our way to this meeting and we could have no further contact with anybody else. One or two of the men in the group wanted to call their wives and tell them they would be late but they were forbidden to do so. They could not get out of that car. One even wanted to stop at a service station for a rest room and he was refused that privilege.

We went to a street corner in Long Beach and there the driver received instructions where to proceed to. This was a home. I do not know the address of it.

There we went in and we were searched by the Communist Party members who were in charge of this house and every bit of evidence was taken from us which might link us to the Communist Party.

And then another car took us to this hall in downtown [171] Long Beach. We went into the hall immediately. We were not allowed to tarry around on the outside and talk or do anything and once we were inside the hall there was a committee at the door which prohibited anyone from leaving.

Q. And what if anything occurred during this meeting?

A. Just about the time the meeting was ready to get started the speaker, the chairman and the speaker was on the platform and in the door walked

(Testimony of William Ward Kimple.)

Captain William F. Hines of the Los Angeles Police Department accompanied by some of his men and some of the men of the Los Angeles Police Department. They took over from then on.

The Court: Was Mr. Diamond at this meeting?

The Witness: He was at that meeting, yes.

Q. (By Mr. Dooley): Did you ever attend any meetings of the Communist Party in which both the defendants, David Diamond and Freeda Diamond were present? A. Yes, sir.

Q. And what meetings?

A. I recall being at several—I will say maybe four or five that I can mentally picture now, membership meetings of the Communist Party held to 2706 Brooklyn Avenue which was the co-operative center, the meeting place for the Communist Party at that time. And these were closed Communist Party membership meetings at which both Freeda and David Diamond were present. [172]

Mr. Brock: Object to the use——

The Court: How do you know they were closed meetings?

The Witness: Again, sir——

Mr. Brock: I object to the use of the term "closed."

The Witness: Again we received our instructions to go to these meetings through the units and we were told it was a membership meeting, at which we were told only the members would be present. And there was always a committee at the door to check every person who came in and if any stranger

(Testimony of William Ward Kimple.)

showed up they were taken aside and their standing determined or they were thrown out.

Mr. Brock: I move to strike the answer on the ground it is founded on hearsay.

Mr. Gostin: May the same objection be interposed on behalf of Freeda Diamond?

The Court: Did you see that happen?

The Witness: Yes, I participated many times.

Mr. Gostin: No foundation has been laid as to whether the defendants were present and I make a motion to strike as to both defendants.

Mr. Dooley: Your Honor, the fact that security measures were taken—the witness knows of the security measures that were taken at the various meetings that he attended and that in itself is weighty evidence that the meetings were closed. What other evidence could there be that a meeting [173] was closed, I would like counsel to say.

The Court: He is going to say that that is up to you.

Mr. Brock: I really don't plan to help Mr. Dooley at all, your Honor.

Mr. Dooley: That is the reason——

The Court: I am going to admit the testimony. You may proceed.

Mr. Dooley: Yes, your Honor.

The Court: Did you ever talk to Mr. and Mrs. Diamond?

The Witness: Many times. They were my personal friends.

(Testimony of William Ward Kimple.)

The Court: Did you ever talk to them about the Communist Party?

The Witness: That was what the most of our conversations was about.

The Court: Did you ever talk about the membership of the Communist Party?

The Witness: I don't quite understand.

The Court: Did you ever talk to them as to whether they were members or not?

The Witness: I have talked to them about carrying on Communist Party work to which only Communist Party members were assigned.

Mr. Brock: I move to strike the last sentence as being a conclusion.

Mr. Dooley: Your Honor, there is no conclusion about [174] talking about Communist Party activities, the witness having been a member of the Communist Party.

The Court: The objection is overruled.

Mr. Brock: The conclusionary part was only that part to which "party members were assigned."

The Court: I am trying to find out from this witness whether he ever talked to Mr. or Mrs. Diamond about their activities in the Communist Party.

Have you ever talked to them about their activities in the Communist Party?

The Witness: Yes. May I right at this moment —I am thinking of David Diamond now. I have conversed with him on Communist Party membership activities.

The Court: Do you know anything besides the

(Testimony of William Ward Kimple.)

fact he attended these meetings that he was a member of the Communist Party? Did you know anything about his membership?

The Witness: Yes. I have seen his membership book and I have seen the Communist Party membership registration and Communist Party receipt card. I have—my wife was a dues secretary and sold them dues stamps and just about every way that a Communist Party member could be identified as such. I have had that.

The Court: You may proceed, counsel.

Q. (By Mr. Dooley): Now, you stated, I believe, that you were assistant membership director from 1936 to 1939. [175] Did you have occasion to see the records of the Communist Party relating to the members during that period? A. I did.

Q. And during that period——

The Court: Just a moment. Where did you see them?

The Witness: They were in my physical possession, sir, at all times. I had them in one or two suitcases. I carried them with me in my car and at home I had them in my personal possession.

Q. (By Mr. Dooley): And did you have occasion to see the records relating to David Diamond or Freeda Diamond?

The Court: Just a moment. Let me ask about these records. Were these the records of your so-called Foster group?

The Witness: No, sir.

The Court: You say you had the records but I

(Testimony of William Ward Kimple.)

am trying to find out what records they were—who they belonged to.

The Witness: May I clarify the Foster-Lovestone group?

The Court: I want to clarify this. You say you know by reason of the records. Now, whose records were they? Were those the records of the Communist Party or records of somebody else that you as a police officer——

The Witness: These were the records of the—official records of the Communist Party in Los Angeles, sir. I was the custodian of them. [176]

Q. (By Mr. Dooley): Will you explain the Foster group and the Lovestone group?

A. Yes. The Communist Internationale in Moscow, in 1929, I believe, gave instructions that this factional dispute in the United States must stop and Lovestone was criticized and all the members were told to support Foster, so from 1929 on there were no Lovestone-Foster groups.

Mr. Gostin: I move to strike that.

The Court: What the instructions were should be stricken. You haven't any of those instructions, have you? Were they in writing or by word of mouth?

The Witness: They were given to us here in a report from our delegate who was sent back.

The Court: By word of mouth?

The Witness: Yes, sir. And we also had the written report in the Daily Worker which is the

(Testimony of William Ward Kimple.)

official Communist Party paper in the United States.

The Court: I think his conclusion that there were instructions should go out.

Mr. Gostin: Yes, your Honor. That is what I was aiming my objection at.

Q. (By Mr. Dooley): Now, Mr. Kimple, while assistant membership director during 1936 and 1939 did you have occasion to see any records or documents relating to the defendants David and Freeda Diamond while you had the membership records [177] in your possession?

A. Would you clarify the question—whether you mean 1936 and 1939 or 1936 through '39.

Q. Through '39. A. Yes, I did.

Q. What records?

A. The Communist Party membership records were 3 by 5 filing cards on which the data concerning the Communist Party members was written.

The data for these cards was copied from the annual Communist Party membership registration which took place every year.

The Communist Party members were confronted with this questionnaire which they were instructed to answer and the questionnaire was then sent back to the membership department; the new Communist Party membership books were issued from the data on these cards and the data from the registration blanks was copied on the 3 by 5 filing cards. This 3 by 5 filing card then became the official Communist Party membership records for that year.

(Testimony of William Ward Kimple.)

Mr. Gostin: Your Honor, I would like to move to strike the answer on the ground it is not the best evidence. The best evidence would be the 3 by 5 cards.

The Court: If he hasn't possession of them he may testify to them. [178]

Mr. Gostin: He testified they were in his possession during '36 and '39.

The Court: What became of the records?

The Witness: When I was expelled from the Communist Party I turned the records back to the membership department.

The Court: And they are not available to you?

The Witness: No, sir.

The Court: You may proceed. That covers your point, does it not?

Mr. Gostin: Yes, your Honor. There is no explanation as to what happened to the records.

Q. (By Mr. Dooley): Now, was there anything else on these records that you recall?

The Court: Just a moment. Did those records that you turned back include the names of David and Freeda Diamond?

The Witness: They did, yes, sir.

Q. (By Mr. Dooley): Were there any other names on those records, Mr. Kimple, relating to the defendant Freeda Diamond?

A. In the Communist Party——

Mr. Gostin: I hate to keep on popping up and down but that calls for a conclusion—"any other names relating to the defendant Freeda Diamond."

(Testimony of William Ward Kimple.)

Mr. Dooley: I will withdraw the question.

Q. (By Mr. Dooley): Were there any other names on the records of Freeda Diamond other [179] than the name "Freeda Diamond" that you recall? A. Yes, sir.

Q. What name do you recall?

A. Freeda Slater.

Q. And when was the last time that you talked with the defendants David and Freeda Diamond——

The Court: Or either of them?

The Witness: About 1950 or '52.

Q. (By Mr. Dooley): And where was that?

A. That was at the entrance to the California Medical Building, I believe was the name of it. It is a doctors' building containing many doctors at 1401 or 1403 South Hope. They were in business there with a newsstand and cigars and the like.

Q. And was anything said between you and the defendants David and Freeda Diamond at that time?

A. Yes. We spoke at that time—they obviously were not aware of the fact that I had been expelled from the Communist Party as a stool pigeon and they spoke quite freely with me and talked over old times and some of the old folks that we used to know together and they asked me if I were active yet and just as a couple of old friends when they get together and talk.

Q. Mr. Kimple, did the Community Party in Los Angeles County issue membership books to its

(Testimony of William Ward Kimple.)

[180] members during the period of your membership in the party? A. Yes, they did.

Q. As a member of the Communist Party did you become familiar with the description of the membership books issued by the Communist Party during the years 1932 and 1933? A. I did.

Mr. Dooley: Will the clerk please give the witness Exhibit 8 for identification?

(Document handed to the witness.)

Q. (By Mr. Dooley): I will ask you, Mr. Kimple, to examine Exhibit 8 for identification and tell the court whether you can identify this document as relating to the Communist Party of the United States in Los Angeles County?

Mr. Brock: I would object to that on the ground, if the court please, that this particular book relates to a period before he acquired official status as assistant membership director — before he had responsibility for the issuance of these.

The Court: He may be able to testify whether or not they are the same type of book that he used afterwards.

Mr. Brock: That I concede. He could say this appears to be the same type of book he had in the year 1932 but to say it is an official book relating to certain periods—at that period I don't think he can.

The Court: I haven't seen the exhibit. I don't know what it contains.

Mr. Brock: It relates to the year 1932.

(Testimony of William Ward Kimple.)

The Court: You may answer the question. You may bring out the facts.

Mr. Dooley: Will the reporter please read the question?

(Question read as follows: "Q. I will ask you, Mr. Kimple, to examine Exhibit 8 for identification and tell the court whether you can identify this document as relating to the Communist Party of the United States in Los Angeles County?")

The Court: Do you recognize that as the type of book that was issued by the Communist Party while you were a member?

The Witness: Yes, sir. This is the same as the Communist Party membership book which I had at that time. It has all the official markings of the Communist Party on it including the Community Party membership dues stamps and assessment stamps.

The Court: That covers the question, does it not?

Mr. Brock: Yes, your Honor. I am quite satisfied with that.

Q. (By Mr. Dooley): Now, during 1933, Mr. Kimple, did the Communist Party in Los Angeles County use registration cards for its members?

A. Yes.

Mr. Gostin: I object to that question because again it calls for something which is not necessarily——

The Court: It is a preliminary question, isn't it, counsel?

(Testimony of William Ward Kimple.)

Mr. Gostin: I can ask again if the stamps were issued to the witness or limit the question to the witness. He is again asking about a period of time prior to 1936 when the witness had an official position as he stated, in the membership department. The question should be more limited to what was issued to him.

The Court: I think that is a preliminary question, counsel. He will have to follow it up.

The Witness: May I have the question again, please?

Mr. Dooley: Will you read the question, Mr. Reporter?

(Question read as follows: "Q. Now, during 1933, Mr. Kimple, did the Communist Party in Los Angeles County use registration cards for its members?")

Mr. Dooley: Will the clerk please give the witness Exhibit 9 for identification?

(Document handed to the witness.)

Q. (By Mr. Dooley): As a member of the Communist Party, Mr. Kimple, did you become familiar with the description of the registration cards issued [183] or used by the Communist Party during 1933? A. Yes, sir.

Q. Will you examine Exhibit 9 for identification and tell the court whether you can identify that document as relating to the Communist Party of the United States in Los Angeles County during 1933?

The Court: During the time you were a member.

(Testimony of William Ward Kimple.)

The Witness: Yes, I recognize this as a photostatic copy of a blank that was used by the Communist Party in Los Angeles to register the Communist Party members during the year 1933.

The Court: May I ask for a point of information, does that card contain the name of any individual?

The Witness: Yes, sir.

The Court: What name?

The Witness: David Thornson.

Mr. Dooley: I will later tie that up, your Honor, with the defendants in this case.

Q. (By Mr. Dooley): Now, as a member of the Communist Party and as assistant membership director of the Los Angeles County Communist Party, did you become familiar with the description of the membership books issued by the Communist Party during the year 1938? A. I did.

Mr. Dooley: Will the clerk please give the [184] witness Exhibit 10 for identification?

The Court: I want to ask a question. Let me have this last exhibit.

The Witness: The registration card, sir?

The Court: Do you know who this party is, David Thornson?

The Witness: I do.

The Court: Who is it?

The Witness: David Diamond.

The Court: Why wasn't the name of David Diamond on this?

The Witness: During this time, your Honor, the

(Testimony of William Ward Kimple.)

police were harassing the Communist Party members to such an extent it was deemed advisable that the Communist Party members use what they call a party name and——.

The Court: Is this David Thornson the same person as David Diamond?

The Witness: Yes, it is.

Mr. Brock: I will object to the answer as being a conclusion of the witness at this stage.

The Court: How do you know it is the same? I think that will bring it out.

Mr. Brock: It may, yes.

The Witness: Well, I knew at that time that that was his name and in 1936 when I took over the membership records, the existing records substantiated my knowledge. I saw that that was his Communist Party name and the identifying data [185] on here further substantiates it—his occupation and other information on there.

May I add to that further, sir, that on the later registration blanks the street address as well as the real party name were on the blanks and it all tied in.

Q. (By Mr. Dooley): Now, will you examine Exhibit 10 for identification which purports to be a 1938 Communist Party membership book No. 59417 in the name of David Diamond and tell the court whether you can identify this document as relating to the Communist Party of the United States in Los Angeles County?

A. Yes, sir. That is an official 1938 Communist Party membership book issued to David Diamond

(Testimony of William Ward Kimple.)

and it contains the membership dues stamps, the international solidarity stamps, mid-year control stamps and the assessment stamps showing that the Communist Party member was a dues paying member during the year of 1938.

The Court: Why was the name David Diamond used on that and the name David Thornson on the other?

The Witness: In 1938 the police activities were not so strict and it was up to the members themselves if they wanted to use a party name—okay. If they didn't want to they could use their real name.

The Court: I think we will take our morning recess of five minutes at this time. [186]

(Short recess.)

The Court: You may proceed.

Q. (By Mr. Dooley): Mr. Kimple, during 1938 did the Communist Party in Los Angeles County obtain receipts for membership books issued to its members? A. They did.

Q. As a member of the Communist Party and as assistant membership director of the Los Angeles County Communist Party, did you become familiar with the description of the receipts obtained for membership books during the year 1938?

A. I did.

Mr. Dooley: Will the clerk give the witness Exhibit 11 for identification?

(Document handed to the witness.)

Q. (By Mr. Dooley): Exhibit 11 purports to

(Testimony of William Ward Kimple.)

be a receipt for a Communist Party membership book No. 59417 in the name of David Diamond.

Will you look at Exhibit 11—will you examine Exhibit 11 for identification, Mr. Kimple, and tell the court whether you can identify that document as relating to the Communist Party of the United States in Los Angeles County?

A. Yes, sir. This is the official Communist Party membership book receipt card which was the first page inside the membership book.

This receipt card was signed for by the person [187] who received the membership book and then sent back to the membership department assuring the membership department that each Communist Party member had received his or her membership book and this is such a receipt card.

Q. Now, you said that is the first page, Mr. Kimple. Will you please re-examine Exhibit 10 and see if that—and show the court how that receipt has any relationship to the book?

(Witness exhibiting card and book to the court.)

A. The receipt card and membership card both have the same identifying data and book number printed on them.

Q. In what other manner do you recognize that as a receipt for the year 1938, Mr. Kimple?

A. I don't believe I understand your question, sir.

Q. Well, is there any other manner that you

(Testimony of William Ward Kimple.)

recognize that as a receipt from the description otherwise?

A. Well, I recognize it as a receipt card which was torn from a Communist Party membership book. This particular book has the name, number—the same name and number on the receipt card and the book.

The inside binding shows the part that was torn from it and the identifying data on here; the industrial section: the laundry unit, Los Angeles County, City of Los Angeles, District 13, and that is all.

The Court: It is the same kind of book that was issued to you? [188]

The Witness: Pardon me?

The Court: It was the same kind of book that was issued to you?

The Witness: Yes, sir.

Q. (By Mr. Dooley): Did all the receipts for the year 1938 have a particular color?

A. They all had the same color, yes, sir, for 1938.

The Court: Did you have anything to do with the issuance of those receipts?

The Witness: Yes, sir.

The Court: You don't know whether you issued that one or not, do you?

The Witness: I do not have an independent recollection of this particular one, no, sir.

The Court: You said you were assistant secretary or something.

(Testimony of William Ward Kimple.)

The Witness: I was the assistant to the membership director.

The Court: And did those pass through the director's hands?

The Witness: More through my hands, sir.

The Court: So you are generally familiar with the type of book that was used?

The Witness: I am very familiar with this type of book, yes, sir. [189]

Q. (By Mr. Dooley): Now, as assistant membership director of the Los Angeles County Communist Party for the year 1937 did you become familiar with the description of membership books issued by the Communist Party during that year?

A. I did.

Mr. Dooley: Will the clerk please give the witness Exhibit 26 for identification?

(Document handed to the witness.)

Mr. Dooley: Which purports to be a 1937 Communist Party membership book No. 75836 in the name of Florence Slater.

Will you examine 26?

A. Yes.

(Document handed to the court.)

The Court: Would your testimony be the same relative to this book as your testimony was to the other book and that it passed through your hands?

The Witness: Yes, sir.

The Court: I notice the name on this exhibit is Florence Slater.

The Witness: Yes, sir.

(Testimony of William Ward Kimple.)

The Court: And who was that?

The Witness: That was the Communist Party name for Freeda Diamond.

The Court: Did they change the name between [190] 1936 and 1937? I notice in 1937 it is in the name of Diamond.

The Witness: That was his name, sir.

The Court: He followed his name through on that one?

The Witness: Yes, sir.

The Court: And part of the time he used another name?

The Witness: He used the other name early in the thirties.

The Court: What was the reason that this wasn't in her name—the name of Florence Diamond?

The Witness: It was her wish to have her Communist Party membership book and records in a Communist Party name.

The Court: How do you know that?

The Witness: Because the membership records showed me that her real name and her party name——

The Court: Did you ever talk to her about it?

The Witness: I do not have an independent recollection of speaking to her about it, no, sir. However, the registration card which was taken from her and sent to the membership department from which the book was put out, showed that the party name was filled in and that meant that she wanted the book made out to her in that name.

(Testimony of William Ward Kimple.)

Mr. Gostin: I think, your Honor, everything except what the card showed would be a conclusion and should go out.

The Court: Did you ever see the card?

The Witness: The registration card?

The Court: Yes. [191]

The Witness: Yes, sir.

The Court: What became of it?

The Witness: That too went back to the membership director.

Mr. Gostin: May I ask—well, it is cross examination. Counsel indicates he thinks it is cross examination. I will hold it until that time.

Q. (By Mr. Dooley): Now, referring to Exhibit 26 again, Mr. Kimple, do you recognize the handwriting on the first page of that book?

A. I recognize the handwriting of William Schneiderman, the signature of the organizer.

Q. And in whose handwriting is that?

A. That is in the handwriting of the lady who later became my wife.

Q. And had you seen your wife write more than once prior to the time that you saw Exhibit 26?

A. Yes, sir, many times.

Q. During 1937 did you wife, the lady whom you later married, hold any official position in the Communist Party of the United States in Los Angeles County?

A. She was the Los Angeles County dues secretary, selling dues stamps to all Communist Party members in Los Angeles County.

(Testimony of William Ward Kimple.)

Q. And during the time did she hold a position [192] with the Los Angeles Police Department?

A. She did.

Q. And during that period of time what authority did she have with regard to writing signatures and so forth?

Mr. Brock: To which I will object as calling for his conclusion.

The Court: I think that calls for a conclusion, what authority she had.

Mr. Dooley: I will withdraw that, your Honor.

Will the clerk please give the witness Exhibit 28 for identification?

(Document handed to the witness.)

Mr. Dooley: Which Exhibit 28 for identification purports to be—I am sorry.

Q. (By Mr. Dooley): You have Exhibit 28, is that correct? A. Yes, sir.

Q. It purports to be a receipt for a 1936 Communist Party membership book No. 60205 in the name of Florence Slater? A. Yes, sir.

Q. Mr. Kimple, can you identify——

The Court: Is that what it shows?

The Witness: No, sir; this is for 1938 membership book. You said 1936. [193]

Q. (By Mr. Dooley): A receipt for 1938 Communist Party book No. 60205. That is for the record. Can you identify that document as relating to the Communist Party in Los Angeles County?

A. Yes, sir. That too is an official receipt card

(Testimony of William Ward Kimple.)

for an official Communist Party membership book for the year 1938.

The Court: *Who* signature appears thereon?

The Witness: Presumably that is her signature.

The Court: You don't know whether it is or not?

The Witness: No, sir, I do not have any proof that that is her signature.

The Court: That was detached from the book the same as you testified to regarding the other book?

The Witness: Yes, sir.

Mr. Dooley: Will the clerk please give the witness Exhibit 27 for identification, which purports to be a 1938 Communist Party membership book No. 60205 relating to Florence Slater?

(Document handed to the witness.)

The Court: Do you recognize the handwriting on that exhibit?

The Witness: No, sir.

Q. (By Mr. Dooley): Now, will you tell the court if you can identify Exhibit 27 for identification as relating to the Communist Party of the United States in Los Angeles County? [194]

A. Yes; that is an official 1938 Communist Party membership book containing the official Communist Party seal with the stamped signature of the organizer and containing all the dues and assessment stamps for the year of 1938, showing that this was a paid up Communist Party member for the year of 1938.

(Testimony of William Ward Kimple.)

Mr. Dooley: Now, will the clerk please give the witness Exhibit 29 for identification?

(Document handed to the witness.)

Q. (By Mr. Dooley): Will you examine Exhibit 29 which purports to be a booklet entitled Two Decades of Progress and tell the court whether you are familiar with that publication? A. I am.

Q. And does that publication relate to the Communist Party of the United States in Los Angeles County?

Mr. Gostin: To which we object. There is no foundation laid to show that this witness has any knowledge as to what publications were issued by the Communist Party. The pamphlet undoubtedly would speak for itself.

The Court: I thought these books were stipulated to.

Mr. Gostin: Copies were stipulated to in place of the originals.

Mr. Brock: We weren't waiving any basic objection. [195] Our stipulation was merely that the Government might use copies.

Mr. Dooley: Mr. Kimple, in answer to counsel's objection, the witness has already testified that he was literature agent in the Communist Party and had the duty of circulating them.

The Court: I think the most he can testify to is that he received books and papers and distributed them.

Mr. Brock: I agree that that is correct. The

(Testimony of William Ward Kimple.)

question was what does the book relate to or does the book relate to the Communist Party?

The Court: It speaks for itself.

Mr. Brock: Certainly.

The Court: I don't imagine they are transcripts from the Bible.

Mr. Brock: There is quite a bit of dispute about some of them. Your Honor's position is exactly our position in that regard. If the book was sold and circulated this may lay a foundation for it but what it relates to is up to the court.

Mr. Dooley: He can answer whether or not it related to the Communist Party.

Mr. Brock: I don't understand the question.

The Court: What the book contains would be a conclusion of this witness. He can testify whether [196] or not that was some of the literature that passed through his hands and that he distributed them.

Mr. Brock: That is correct.

Q. (By Mr. Dooley): Mr. Kimple, do you know how Exhibit 28 came to be published?

A. Yes, sir.

The Court: I am sorry but I did not hear the question.

Mr. Dooley: How the book came to be published.

The Court: How it came to be published?

Mr. Dooley: How.

Mr. Gostin: Object as calling for a conclusion of the witness and it is incompetent, irrelevant and immaterial.

(Testimony of William Ward Kimple.)

The Court: May I ask this question? I think I can clarify it.

Do you recognize that as one of the books that passed through your hands?

The Witness: Yes, sir.

The Court: And do you know whether or not you distributed it among the membership?

The Witness: I not only distributed it among the membership but I worked to compile it.

The Court: What?

The Witness: I worked to compile it.

The Court: Did the Diamonds have anything to do with the compilation? [197]

The Witness: That I do not know, sir.

The Court: Do you know whether or not they ever had a copy of it?

The Witness: I cannot testify of my own knowledge that I ever saw a copy of it in their hands, but I can testify to the fact that every Communist Party member was——

The Court: Supposed to have it?

The Witness: Yes, was given these.

Q. (By Mr. Dooley): Now, do you know the extent of circulation of this exhibit or copies thereof in Los Angeles County?

A. It was very extensively distributed. I cannot give you the number of copies distributed at one time but I knew how many at one time but I have forgotten now.

The Court: Where was it published?

The Witness: Here in Los Angeles or at least

(Testimony of William Ward Kimple.)

it was compiled here and I believe printed here, but the actual printing of it I am not positive about.

Q. (By Mr. Dooley): Now, will you turn to page 39, I believe, of Exhibit 29.

Mr. Brock: That is right, that is the page.

Q. (By Mr. Dooley): And at the top of the page there appears two photographs which are not too good, but can you identify those photographs, Mr. Kimple? A. I can. [198]

(Document handed to the court.)

Q. (By Mr. Dooley): And at the left-hand top of page 39 who is the person on that page?

A. That is David Diamond, that is a picture of him.

The Court: And is that a picture of Freeda Diamond?

The Witness: Yes, sir.

The Court: It is too bad that counsel won't bring in the parties so we can compare them and see if they are good pictures.

Mr. Gostin: I couldn't recognize those pictures, your Honor, they are terrible pictures.

Q. (By Mr. Dooley): Now, on page 41—I don't have a copy of the exhibit, but on page 41 of Exhibit 29 for identification appears the name in parenthesis or quotes "Gorky" and after that "Freeda Diamond" and the heading "Captains of Groups." Do you know what that "Gorky" refers to, Mr. Kimple?

(Document handed to the court.)

(Testimony of William Ward Kimple.)

The Witness: Yes, sir.

Q. (By Mr. Dooley): And what does that refer to?

A. The Communist Party units in 1938 had become branches on assembly district basis and they were quite large and in order to make the mechanics of the functioning of the unit a little more simple they divided it into groups or squads and each squad was given a name or a number and one person elected as the captain of that group and that is what this was. [199]

The Court: Does the name "Gorky" mean anything.

The Witness: That, I believe, your Honor, was the name of a Communist—may I use the word "big shot" in Russian.

Mr. Brock: The name of a Russian writer before Communism was ever heard of.

The Court: Do you speak Russian?

Mr. Brock: No, sir.

The Court: I just wondered if it had any significance.

Mr. Brock: It is the name of a writer. Gorky was a Russian writer who I think lived a little while after the revolution and then became deceased.

Q. (By Mr. Dooley): Now, Mr. Kimple, during your membership in the Communist Party did you attend any schools or classes conducted by the Communist Party? A. Yes, sir.

Q. And what schools or classes did you attend?

(Testimony of William Ward Kimple.)

A. I attended many schools and classes from the very first that I joined the Communist Party.

I started in attending classes and periodically through the time I would attend schools sometimes week-ends or sometimes nights for a period of a month or two, depending upon how they were organized.

Mr. Gostin: I don't know if counsel is going to ask it, but we want to have these schools and classes [200] tied in to our defendants if there is any connection.

The Court: I presume this is preliminary to tying them in.

Mr. Dooley: Your Honor, at this time I am qualifying him to testify concerning the aims and objectives of the Communist Party.

The Court: As an expert?

Mr. Dooley: As an expert, your Honor, yes.

Mr. Gostin: To which we will object, your Honor, because we don't feel that the aims and objectives of a political party can be the subject of expert testimony.

I feel that the witness may testify as to perhaps his own understanding if it is connected with the defendants.

The Court: Counsel, I am afraid I am going to have to disagree with you because Judge Chestnut in Baltimore instead of having all the evidence of this type that they had *here* in the lengthy Communist trial, shortened it by simply permitting expert witnesses to testify as to the aims and ob-

(Testimony of William Ward Kimple.)

jectives of the Communist Party and it was upheld by the Circuit Court and the Supreme Court denied certiorari.

Mr. Gostin: I understand, your Honor. I may be in error, but Judge Yankwich held that expert testimony in his court was not allowed.

The Court: I am going on what Judge Chestnut did.

As you gentlemen know I have taken the [201] position that we really didn't need any evidence on this point, but the Government wants to go into the details and so I am not going to hold that it is a matter of common knowledge, its aims and objectives, and inasmuch as they sustained a criminal prosecution and the Supreme Court of the United States denied certiorari on it I don't know why it shouldn't be good here.

Mr. Gostin: Our position, briefly, is as in any large body of ideas it is subject to different interpretations.

For example, your Honor mentioned the Bible previously. We don't think that would be the subject of expert testimony because that can have different meanings.

The Court: We have lots of experience on it, counsel.

Mr. Brock: But none that agree.

The Court: They may not agree in this case. You may proceed. I am going to overrule the objection.

Q. (By Mr. Dooley): Now, in the schools and

(Testimony of William Ward Kimple.)

classes that you have just described, Mr. Kimple, were you taught the aims and objectives and characteristics of the Communist Party of the United States?

Mr. Brock: To which I will object as calling for hearsay, as being vague and indefinite as to "was he taught", by whom? Certainly if there is a question of one being an expert, being an expert on something I think it must be predicated upon really substantial evidence and it must at least include a thorough knowledge of the literature in the [202] field.

Now, what Joe Doakes may have taught him at a school may have little or no reference to what the aims and objectives truly are and I think this is the very type of thing that we are trying to get away from here.

If it is the subject of expert testimony then I submit it is only those people who have really qualified themselves in this, to me, a complicated and obtuse field.

The Court: Who could be more of an expert than somebody who belonged to the Communist Party for—what was it? Six years?

The Witness: No, sir, 11 years.

Mr. Brock: I submit membership over a very long period of time is no criterion of expertness in any field and I would cite your Honor examples in any one of the major Christian sects. You can ask any one of the members as to the basic concept such as the trinity or whatever their concept

(Testimony of William Ward Kimple.)

may be. They just don't know. They are members but don't know these things.

The Court: There are a lot of backsliders.

Mr. Brock: Yes, and you would find the same thing true among the Republican Party and Democratic Party. You wouldn't find any 10 people who got together even though they are members for 20 years, have a real meeting of the mind as to the real principles and aims. [203]

Mr. Dooley: In the first place Judge Yankwich stated during the course of the trial in his court that a witness having attended classes conducted by the Communist Party could clearly testify as to what was taught as the aims and objectives of the Communist Party. That is not hearsay because the fact that leaders of a party teach a particular thing shows that the party advocates that particular thing that they teach.

Now, Judge Yankwich also permitted testimony as to conferences with leaders of the Communist Party and in that conference what they said were the aims and objectives of the Communist Party.

Mr. Brock: That is not the question asked here.

Mr. Dooley: That is the question going to be asked. I am discussing the teaching portion as not being hearsay.

Mr. Brock: I think it is patent on its face—it is patent on the face of the question "What were you taught" means nothing, absolutely nothing.

The Court: I am sorry but I can't agree with counsel. I will overrule the objection.

(Testimony of William Ward Kimple.)

Q. (By Mr. Dooley): And in the schools after classes which you attended, Mr. Kimple, were you taught the aims and objectives and characteristics of the Communist Party? A. We were.

Q. And what were you taught were the aims, [204] objectives and characteristics of the Communist Party?

Mr. Brock: I would like to urge a further objection.

The Court: You should qualify him further. To what extent did you read the literature that was furnished you?

The Witness: To a considerable extent, not as much as many of the leaders but enough to keep myself abreast of the aims and purposes of the party and enough to lead the unit in discussions, et cetera.

The Court: And did you ever talk to the leaders that brought the information to the organization that you testified to a short time ago? You said that information was passed on by word of mouth.

The Witness: I don't quite follow your question, your Honor.

The Court: If I remember your testimony correctly you stated that information was brought to you by others by word of mouth and not by written instructions that you saw.

The Witness: For organizers' meetings and for literature agents' meetings, educational meetings, yes, but on educational meetings and literature, the

(Testimony of William Ward Kimple.)

literature was given to us and we were told to have discussions in the unit meetings on this particular question at the next meeting.

Mr. Gostin: Your Honor, if the witness is to be allowed to testify as to what he was taught—is allowed to testify as an expert concerning the aims [205] of the Communist Party I would like to ask the court's permission to examine the witness on voir dire to determine his qualifications for so testifying.

The Court: I will permit that, counsel, on the assumption you will not repeat all the same questions on cross examination.

Mr. Gostin: No, your Honor, I will try to limit my examination to concerning his qualifications on the subject.

Voir Dire Examination

Q. (By Mr. Gostin): Now, Mr. Kimple, I believe you stated that you attended certain classes of the Communist Party. A. Yes, sir.

Q. Will you please tell me as you can recall now, every class that you attended of the Communist Party? I would like to know where it was and when it was.

A. I do not have right now the exact dates of when I attended these classes. I know that I attended many classes in Boyle Heights at the cooperative center.

I attended classes in about the middle of the thirties in Hollywood at the home of Davida Fran-

(Testimony of William Ward Kimple.)

chi. And I attended classes in the San Fernando Building—I believe it is at Fourth and Main. I think that was in '38 and '39.

Earlier I attended Communist classes at 224½ South Spring Street along about 1936 and '37. [206] That is what comes to my mind right now about the classes that I attended.

Q. Can you tell us the first time you attended a Communist class? A. The exact date, no, sir.

Q. Approximately.

A. But it could have been in the fall, late summer or fall of 1928.

Q. How long did that class take?

A. There were one day classes and one evening classes.

Q. Well, I just want the first time.

A. Well, to the best of my knowledge I believe the first time—I don't have a definite recollection of that exact period of time, but the first ones were just one night ones.

Q. When you say "class" were these special classes for discussion of general matters or discussion of particular subjects?

A. They were educational——

The Court: What do you mean by "educational"?

The Witness: By that I mean, your Honor, we were new members in the Communist Party and we were being instructed on what the party was to do, what was expected of Communist Party members.

(Testimony of William Ward Kimple.)

Q. (By Mr. Gostin): Was that what your first class consisted of, items of that sort? [207]

A. That is my best recollection now, yes, sir. That was in the earlier ones.

Q. And you had subsequent classes along the same line? A. Yes, sir.

Q. Who taught these classes or who conducted these educational classes?

A. You are referring now to the first ones?

Q. Yes.

A. I remember Rose Ruben taught some and I remember Frank Specter taught some.

Q. And after these people—what did they do when they conducted these classes—did they give a lecture? A. An informal talk.

Q. And then were certain questions directed——

A. I do not recall of a question period.

Q. Well, did there then follow a general discussion of the subject matter by those present?

A. I recall sometimes we were permitted to ask questions.

Q. And I take it the answers were given to those questions? A. Yes.

Q. Was this agreement or questions invited by the person who conducted this particular class?

A. I do not have a definite recollection of whether questions were invited. They were respected and honored.

Q. What was the longest class you attended in the Communist Party?

A. Well, right now to the best of my recollec-

(Testimony of William Ward Kimple.)

tion it was about three or four weeks of one or two nights a week.

Q. And where was this class held?

A. Well, the one I am thinking about right now I believe was held in the San Fernando Building.

Q. What was the subject matter of that class?

A. That I do not remember.

Q. Did you do any reading in connection—reading in connection with the attendance at this class?

A. Yes, sir.

Q. What did you read at this class?

A. I do not remember.

Q. Would you kindly tell us what of Marx and Lenin's work you have read in connection with your attendance at classes?

A. I recall the Little Lenin Library was used extensively in the classes.

Q. I am asking you what you read?

A. I do not have a recollection now of the names of those books.

Q. Give the name of any book of Marx or [209] Lenin's work that you read while attending these classes.

A. Let me see, Stalin on Leninism.

Q. When did you read that?

A. I don't remember, sir. We read that at different times.

Q. Did you read it more than once?

A. You asked me if I read it. Do you mean cover to cover?

(Testimony of William Ward Kimple.)

Q. Well, let me ask you instead, did you read it at any time cover to cover?

A. I do not believe so.

Q. How much of it have you ever read?

A. Just sections of it as was required for the classes and discussions.

Q. You would read a short excerpt here and there throughout the book?

A. Parts of it, yes.

Q. About how much of the entire book would you say you read in that manner?

A. Well, sir, I don't remember.

Q. How long ago did you last read it or any part of it?

A. I haven't read that since maybe about 1938. That is my best recollection now.

Q. What was the subject matter of the selections that you read from it? [210]

A. I do not recall.

Q. Do you recall any other Marxist-Lenin work that you may have read?

A. There was one "Left-Wing" "Communism, an Infantile Disorder."

Q. Did you read that book?

A. Not that I recall.

Q. Well, I am just asking you now about books that you read.

A. I do not recall the names of those books.

Q. Well, you have only given me one. You mean that is the only Marx-Lenin works that you can recall ever having read a portion of?

(Testimony of William Ward Kimple.)

A. To my memory right now. I don't remember the names of those books. I was not interested from an educational standpoint on burdening my mind with Communist literature.

Q. You were the educational and literature director at one time?

A. Yes, sir; I retained it long enough to carry on my discussions but not to carry on to my later life.

Mr. Gostin: Your Honor, I can probably keep this up for a long time, but if the witness can only recall having read brief extracts from one book he is certainly not qualified to testify as an expert.

The Court: I think that is a question of weight.

Mr. Dooley: The witness left the Communist Party in 1939. I would like to ask the witness questions with reference to certain books that I have before me. Of course the witness is not going to remember particular passages from books he read in 1938 and 1939, but I would like to show the witness certain of the books I have here and ask him whether he read any particular book.

Mr. Brock: I submit if he is testifying as an expert there is no excuse to come in here and say he can't remember particular passages. This is the least expert expert I have ever seen.

The Court: Now, counsel, it is like any other case where you have an expert. The weight of the testimony is up to the tryer of the facts.

Mr. Gostin: But you first must be an expert. If

(Testimony of William Ward Kimple.)

he hasn't read certain books how can he aid the court?

Mr. Dooley: Unless you show him the books he wouldn't know whether he read them or not.

Mr. Gostin: I will continue on certain specific items. I would have no objection if this witness testified from facts he knew himself. If he could identify a certain book as having passed through his hands that is one thing——

Mr. Dooley: If counsel will ask him whether he has read a particular book—— [212]

Mr. Gostin: I understand the court, however, is going to allow this witness to testify as an expert, which is an entirely different matter, and I am trying to establish there is no foundation whatever for expert testimony from this witness, but if the court agrees with me I would have no objection to the witness testifying to the particular books he may have distributed or read.

My purpose on voir dire is to establish that this witness is not qualified in any manner, shape or form as an expert witness.

If the court wishes I will ask the witness about certain matters.

The Court: You may proceed.

Q. (By Mr. Gostin): Mr. Kimple, have you ever read "Foundation of Leninism"?

A. I remember the book.

Q. Have you read it?

A. And I do not have at this particular time

(Testimony of William Ward Kimple.)

an independent recollection of having read that book.

Q. And you stated, I believe, that you did not read "Left-Wing Communism, an Infantile Disorder"?

A. I do not have an independent recollection now of having read it. However, I do have a recollection of the book being used in the units and circulated as Communist Party literature. [218]

Q. But you do not have any recollection of reading it?

A. I do not have any recollection of reading it.

Q. Did you ever read "Problems of Leninism"?

The Court: What is that name?

Mr. Gostin: "Problems of Leninism."

The Witness: Yes, sir, I remember that book.

Q. (By Mr. Gostin): You read that book?

A. I believe I have.

Q. When did you read that book?

A. It would have been during the period of my membership in the Communist Party, but just what time I do not know.

Q. Well, would it be in 1939?

A. I feel sure, sir, it was not 1939.

Q. 1938? A. 1938 is probable.

Q. Did you read the book in its entirety at that time?

A. That I do not remember, sir.

Q. Do you know what subject matter that book deals with? A. I do not remember.

Mr. Dooley: I object to this on the ground it is

(Testimony of William Ward Kimple.)

cross examination. I believe it exceeds the scope of voir dire examination. [214]

Mr. Gostin: I am merely trying to find out the witness's ability to testify as an expert in this field.

Mr. Dooley: A person having read a large number of books over the years is not expected to point out what each particular book contained. If he recalls the subject matter——

Mr. Brock: So far the testimony indicates he hasn't read them. If I say that I went into a class to teach a class on torts and then admit that I haven't read anything on the subject and if I have I have forgotten it——

The Court: We have expert lawyers who are in that position all the time.

Mr. Brock: I know we do.

Mr. Gostin: But that is a witness different from this witness. This witness is holding himself out to be an expert in a particular field when he hasn't even read the books.

The Court: The weight to be given to a witness's testimony is a question of fact. I have permitted you to question him as to his qualifications and then I am to determine what weight is to be given to his testimony.

Mr. Gostin: Well, your Honor, isn't there one difference, that if the witness has no qualifications whatever in the field——

The Court: I think he has shown some qualifications, counsel.

Mr. Gostin: He has in certain respects. [215]

(Testimony of William Ward Kimple.)

The Court: A man that has been a member as long as he has and has had dealings with their literature year after year and during a period of over 15 years, it is not surprising, at least to me with the kind of memory I have, that he can't remember just exactly what books he read.

Mr. Gostin: Well, I have given him wide latitude, your Honor. I am not objecting to his testimony. I want to make clear as to what books he may have distributed. The fact that books were distributed I am not objecting to. I am objecting here to the fact that he cannot qualify and give his conclusions because that is what an expert witness does, as to certain matters unless he is qualified to do so and that is the only point of my objection.

The Court: I will admit the testimony, counsel.

Mr. Gostin: All right, your Honor. Then I would like the record to show our objection that no foundation has been laid for expert testimony by this witness.

Mr. Brock: And that objection goes to both defendants.

The Court: Objections overruled.

Direct Examination—(Continued)

Q. (By Mr. Dooley): Now, Mr. Kimple, in the schools or classes which you attended what were you taught were the aims and objectives of the Communist Party?

Mr. Brock: At this point I am objecting—I am [216] going to object. There is no indication of

(Testimony of William Ward Kimple.)

what he was taught or by whom he may have been taught. He may have been taught by a janitor in the building. And this is certainly not significant, what one member may even say to another.

The Court: I think this can be gotten at in a different way. I think if you ask him the question and then ask him whether or not these subject matters were discussed at any meetings or classes——

Mr. Dooley: Yes, your Honor. Well, suppose—I believe that there is no question of hearsay as far as what he was taught at the schools of the Communist Party that he previously described and attended in Hollywood, in the co-operative center and San Fernando Valley, 224½ South Spring Street; that were taught by Frank Specter and some were taught by Rose Raben and other instructors.

Now, as to what those persons of the Communist Party taught him at those classes is clearly evidence of what the Communist Party advocated and would be before giving his opinion as an expert. This is merely testimony as to what the leaders of the party taught him at these classes.

The Court: Why don't you ask him the question. Get down to it and ask him the $64,000 question and get it over with and then you can ask him what he bases it upon.

Q. (By Mr. Dooley): Mr. Kimple, what were the aims and objectives of the Communist Party during your membership therein? [217]

Mr. Brock: To which I will object on the ground

(Testimony of William Ward Kimple.)

no foundation for showing that he knows what the aims and objectives were and the further ground that there is no showing that there were any aims and objectives of the Communist Party, and on the further ground he is not qualified to testify as an expert. And on the further ground it calls for hearsay and conclusions.

Mr. Gostin: We join in the same objection.

The Court: Objection overruled. You may answer the question.

The Witness: We were taught that the aims and purposes of the Communist Party was to organize the proletariat of the United States into the Communist Party, which would be united with the Communist Internationale in Moscow, and that the purposes of the Communist Party were the overthrow of the capitalist system of government as it exists in the United States today.

We were taught that we as workers were not to be fooled; that we knew that the ruling class, the capitalists, would never relinquish their power in the United States merely through the use of the ballot.

We were told that we as Communists had to be prepared to take up arms to defend the Communist Party and that we were to work among the armed [218] forces in the United States and to get them to turn their guns, not on their brothers, the workers, but on their bosses and slave drivers, the capitalists, when the time came.

Q. (By Mr. Dooley): And were you taught

(Testimony of William Ward Kimple.)

that there was—were you taught, Mr. Kimple—state whether or not you were taught whether there was any relationship between the Communist Party in the United States and the Communist Party elsewhere.

Mr. Brock: May we have the same objection as to the prior question and on the same grounds?

Mr. Gostin: And may we have a continuing objection to this kind of questions?

Mr. Brock: We will make the objection and incorporate the grounds. It will make it easier for the court.

The Court: You understand, counsel, I have only heard a part of this testimony. I don't know how this is going to be tied up. I will consider a motion to strike at the proper time if it is not tied up.

The Witness: Your question was what?

Q. (By Mr. Dooley): What relationship, if any, was there between the Communist Party in the United States and the Communist Party elsewhere?

A. The Communist Party in the United States was one branch of the Communist Internationale which had Communist Parties in nearly all of the [219] other countries of the world, and they were all bound together by the Communist Internationale in Moscow.

The Court: Were those subject matters told to you at these different meetings that you attended in classes?

(Testimony of William Ward Kimple.)

The Witness: That information I gathered from classes and from talking with the leaders.

Q. (By Mr. Dooley): Will you describe to the court the opportunity that you had to confer with leaders of the Communist Party?

The Court: I didn't understand that question, counsel.

Q. (By Mr. Dooley): I say, will you describe to the court the opportunity you had to converse with leaders of the Communist Party?

Mr. Gostin: Objected to as calling for hearsay and no proper foundation laid unless it was in the presence of these defendants.

Mr. Dooley: I am not trying to establish the defendants as being present. I am trying to establish the aims and objectives of the Communist Party.

Mr. Gostin: Outside of the defendants' hearing?

The Court: The fact that he may have talked to them I think is admissible but what they said is another matter.

What do you base your opinion upon that the Communist Party advocated the overthrow of this government by force and violence? [220]

The Witness: I have seen it in print and I have been told by the educators of the Communist Party, the leaders.

The Court: At any of these meetings were either Mr. or Mrs. Diamond present?

The Witness: I do not have an independent rec-

(Testimony of William Ward Kimple.)

ollection of ever attending a school or class at which either of them were present.

The Court: Well, you say based upon what the leaders told you. Did you base it upon any of the literature that you read?

The Witness: Yes, sir; I have seen it in print many times.

The Court: Print that was furnished or distributed among the membership?

The Witness: Yes, sir, distributed by the Communist Party for the membership.

Q. (By Mr. Dooley): Mr. Kimple, do you know how literature was distributed in Los Angeles County among members of the Communist Party?

A. Yes, sir.

Q. And in what manner?

A. There was a Los Angeles County literature agent who had charge of the literature that was coming into Los Angeles County and he in turn distributed that literature to the literature agents [221] of the unit or sometimes it went to the secretary first and then to the unit and then it was distributed from the unit to the members as a whole and to non-members.

The literature was always distributed through public meetings, mass meetings, street meetings, et cetera.

The Court: Gentlemen, it is 12:00 o'clock and we will take a recess until 2:00 o'clock at this time.

(Whereupon at 12:00 o'clock noon a recess was had until 2:00 o'clock p.m. of the same day.) [222]

Wednesday, February 29, 1956, 2:00 p.m.

The Court: You may proceed.

Mr. Dooley: Your Honor, I would like to state for the record that after the court recessed yesterday evening, another subpoena was given to the marshal in the case of each of the defendants, and I have been informed by the marshal that efforts were again made last evening to serve the defendants without success.

I would like also to inform the court that I have communicated with the Federal Bureau of Investigation and that they also made efforts to locate the defendants thus far without success.

The Court: You may proceed.

Mr. Dooley: Your Honor, I would also like to serve upon counsel for the defendants a copy of Exhibits 1 and 16, which are the affidavits which have been admitted in evidence in this case.

They are now being served upon the counsel for the defendants.

The Court: What is the effect of them?

Mr. Dooley: Well, I am not too sure as to the effect of the service at this time. They were admitted in evidence yesterday and your Honor told me to serve counsel for defendants with a copy.

The Court: Oh, I see. It is one of the exhibits?

Mr. Brock: Yes. This was the exhibit that was

purportedly the affidavit of good cause and we asked for a copy and counsel has furnished it to us.

Might I at this point interpose an objection to the copy, now having had a chance to read it? Would this be a convenient time?

The Court: I told counsel at quite length that I was not going to rule on the effect of that until the Zukie—isn't that what you call it?

Mr. Brock: Zuka, Z-u-k-a.

The Court: Until that case was determined by the Supreme Court.

Mr. Brock: There is one point I would like to raise with reference to the affidavit apart from what I previously raised as a legal objection, and that is that the affidavit, even taking it at what it purports to be and what is contained in it, is not a sufficient affidavit of good cause under any circumstances. I think the affidavit in that regard will speak for itself.

I would be happy to have your Honor reserve the ruling on the objection until you have had a chance to go over it rather than belabor it at this point.

The Court: I will receive it subject to a motion to strike and thus protect your record, because I [224] just can't rule on that question until the Supreme Court gives us a guide.

Mr. Brock: Well, may it be deemed that I have made a motion to strike and that your Honor has taken it under submission?

The Court: Yes.

Mr. Gostin: As to both cases, your Honor?

The Court: Yes.

Mr. Dooley: Mr. Kimple, will you take the stand again?

WILLIAM WARD KIMPLE

a witness called as a witness by the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Mr. Dooley: Will the clerk please give the witness Exhibit 31 for identification which purports to be a booklet entitled "Foundations of Leninism" by Joseph Stalin.

Mr. Brock: May I make this objection to what is being done and about to be done and that is this: I think it is perfectly proper for counsel to ask Mr. Kimple to testify that certain books were handled and certain books were sold and so forth, but I don't think it is quite proper to hand him a book he has already been questioned under voir dire about his knowledge of books, and then have him look at the book and say "This is it."

This appears to me to be a very leading kind [225] of approach to the problem. Anybody can look at a book that is handed to him by counsel and realize it is a relevant and important book in the case.

If Mr. Kimple had this acquaintanceship with the books I think he should be asked to name what books he used.

(Testimony of William Ward Kimple.)

The Court: I don't think so necessarily. If he is shown a certain book he may identify it. The objection is overruled.

Mr. Brock: I take it counsel is not trying to have him identify a certain book but a book by this name was used.

The Court: I assume that these are printed books and that there are probably many of them in existence.

Mr. Brock: I am sure that is true.

The Court: Whether this is the type of book that he had in his possession.

Mr. Brock: My point went only to the leading nature of the way of handling the direct examination.

The Court: Well, the objection is overruled.

Q. (By Mr. Dooley): Mr. Kimple, will you examine Exhibit 31 for identification and tell the court whether that document or copies thereof were circulated by the Communist Party during the period of your membership therein?

A. They were.

Q. And in what manner?

A. These books were the foundation of many unit educational meetings — Agit-Prop — that is a [226] contraction of the word "agitation" and the word "propaganda" and the educational director was the Agit-Prop director in the unit and this pamphlet was used many times in conducting educational meetings in the unit.

The Court: Did you use them in the meetings

(Testimony of William Ward Kimple.)

that you attended? Were they used for that purpose?

The Witness: Yes, sir.

Q. (By Mr. Dooley): And in your work as literature agent did you have occasion to handle that booklet?

Mr. Dooley: Will the clerk of the court please place on the witness's table Exhibits 32, 33, 34, 35, 36, 37, 38 and 39?

The Court: Don't go too fast, counsel.

Mr. Dooley: I am sorry. 40, 41, 42, 43 and 44.

Now, Mr. Kimple, will you examine Exhibit 32 for identification which purports to be a booklet entitled "Left-Wing Communism and Infantile Disorders" by V. I. Lenin and tell the court if you know whether this exhibit or copies thereof were circulated by the Communist Party during the period of your membership therein?

A. They were.

Q. And in what manner was this exhibit circulated?

A. This pamphlet or magazine was another one of the Little Lenin Library, which was considered as a must for the reading of the Communists who [227] hoped to educate themselves along Communist lines and this book was in the unit literature bundle at most times.

The Court: Did you handle them?

The Witness: Yes, sir.

The Court: Were those the instructions you re-

(Testimony of William Ward Kimple.)

ceived? Were they used in the schools that you attended?

The Witness: At this particular moment I don't recall of this particular one being used in the school.

The Court: Was it ever used at one of the meetings?

The Witness: We have had them in the unit meetings, yes, sir.

Q. (By Mr. Dooley): Mr. Kimple, will you please examine Exhibit 33 for identification?

The Court: Is it the same question, counsel?

Mr. Dooley: Yes.

The Court: What is your answer to Exhibit 33?

The Witness: Yes, sir; this pamphlet, "The Way Out" is another one that was published or circulated in the units and was widely read and discussed in the unit meetings, in the educational department.

Q. (By Mr. Dooley): Will you examine Exhibit 34 and answer the same question with regard to it?

A. "The Program of the Communist Internationale." That is also a pamphlet which was used very widely in the educating of the Communist Party members. This was one of the basic—— [228]

The Court: How do you know that?

The Witness: Well, sir, I have seen that in use in Communist meetings many, many times.

Q. (By Mr. Dooley): Now, will you please examine Exhibit 35 which purports to be a pamphlet

(Testimony of William Ward Kimple.)

entitled "The Communist Party in Action" by Alex Bittelman and answer the same question with respect to that exhibit?

A. This little pamphlet, "The Communist Party in Action" by Alex Bittelman was another one put out by the Communist Party and circulated in the units.

This particular pamphlet was one that the Communist Party members were urged to take and carry in their pocket at all times and to pass on to their fellow workers in the shops as sort of a recruiting aid.

The Court: Were you so instructed?

The Witness: Yes, sir.

Q. (By Mr. Dooley): Mr. Kimple, would you please examine Exhibit 36 for identification, entitled "The Communist Manifesto" by Karl Marx and Friederich Engels?

Now, if the court please, the volume of the "Communist Manifesto" which I was able to obtain is one that was published, a reprint that was published subsequent to the time that Mr. Kimple left the party and I have so informed opposing counsel.

Mr. Brock: We are not raising any objection [229] for that purpose. We assume it is the same words. If we find it is different from the original we will advise the court.

Q. (By Mr. Dooley): Will you please examine Exhibit 36, which purports to be a pamphlet entitled "The Communist Manifesto" by Karl Marx

(Testimony of William Ward Kimple.)

and Friederich Engels and answer the same question with respect to that exhibit?

A. Yes. "The Communist Manifesto" is another pamphlet which was widely used in the units in the educational work of the Communist Party members. This is another of the basic pamphlets.

The Court: Did you have any contact with it?

The Witness: Yes, much of the time.

Q. (By Mr. Dooley): Will you please examine, Mr. Kimple, Exhibit 37 for identification which purports to be a pamphlet entitled "The Constitution and By-Laws of the Communist Party of the United States of America," adopted in May of 1938 and tell the court if you know whether this document was circulated in the Communist Party?

A. "The Constitution and By-Laws of the Communist Party" was a pamphlet which was at all times in the unit library for use of the Communist Party members to acquaint themselves with it.

The Court: You are talking about a library. Where was this library?

The Witness: When I refer to a "library", sir, [230] I mean it was a bundle of literature which was in the possession of the literature agent of the unit and which he brought to the meetings.

The Court: Did you have it in your possession at any time?

The Witness: Yes, sir, while I was literature agent.

Mr. Brock: It is clear he doesn't mean a downtown library. He just means in the unit.

(Testimony of William Ward Kimple.)

The Witness: Just a little bundle a person has with him that he took to the unit with him.

Mr. Brock: To be sold?

The Witness: To be sold and distributed, yes, sir.

Q. (By Mr. Dooley): Mr. Kimple, will you please examine Exhibit 38 for identification, which purports to be a pamphlet entitled "The Struggle Against Imperialist War and the Tasks of the Communists" and tell the court whether, if you know, this exhibit or copies thereof were circulated in the Communist Party during your membership therein?

A. This pamphlet, "The Struggle Against Imperialist War and the Tasks of the Communists" is a pamphlet which was widely distributed among the Communist Party members in the unit and they were asked to distribute this to their fellow workers outside.

At the time there was considerable talk among the Communists that an imperialist war was about [231] to break out and they urged that all party members acquaint themselves with this pamphlet in order that they could propagandize the workers.

The Court: Were you advised by anyone to that effect? How do you know they were advised to do it?

The Witness: Those instructions, sir, came to the unit through the organizers' meetings and through the literature agents.

The Court: When you handled them what did you do with them?

(Testimony of William Ward Kimple.)

The Witness: I usually turned them over to the police department, sir. I didn't do very much circulating.

Mr. Gostin: I will object to the witness's response—that is everything after the first sentence. It certainly is not responsive and are conclusions and hearsay.

The Court: I think part of it is a conclusion, counsel, because he does not know of his own knowledge. I appreciate that fact.

Mr. Gostin: Is the motion sustained in part then as to everything after the first sentence?

The Court: I don't know what part you are referring to, counsel.

Mr. Gostin: I will object to everything except the sentence "It was circulated and used."

The Court: I will sustain the objection, [232]

Mr. Dooley: I believe there were portions other than circulation and use based upon his own knowledge.

The Court: Did you handle them in the educational department yourself?

The Witness: As an organizer in the unit I instructed the party members in my unit to utilize this and they were so instructed through the educational director.

The Court: Well, were Mr. and Mrs. Diamond in that unit?

The Witness: No, sir.

Q. (By Mr. Dooley): Now, Mr. Kimple, would you please examine Exhibit 39 for identification

(Testimony of William Ward Kimple.)

which purports to be a pamphlet entitled "Why Communism? Plain Talks on Vital Problems" by M. J. Olginn and answer the same question as with respect to the previous exhibits?

A. "Why Communism?"

The Court: Would you answer that question the same as you did with reference to the other pamphlets?

The Witness: Not quite. This particular pamphlet, sir, was another one that the party members were urged to take on to the job where they were working and put them in the lockers of their fellow workers.

The Court: How do you know that to be true?

The Witness: We were instructed to do that, sir.

The Court: And did you so instruct the members?

The Witness: I so instructed the members, yes, sir. [233]

Mr. Brock: I still would like to object to the question and move to strike the answer on the ground that it is obviously based on hearsay—what somebody told this man and what he told somebody else. I don't see it ties in either the doctrines and policies of the Communist Party or to our clients in any way.

The Court: Counsel, I don't know how much evidence there is going to be along this line. I can't pass upon it. I don't know to what extent he expects to tie this up with some of the defendants.

(Testimony of William Ward Kimple.)

Mr. Brock: But we don't want to be in the position of not making an objection at the appropriate time. We may seem to object over-much—excuse me, sir.

The Court: I will receive it subject to a motion to strike.

Counsel, do you expect me to read all these pamphlets?

Mr. Dooley: Your Honor, I intend to and I think it might be a good idea, to present to the court excerpts from each one of the pamphlets and in addition to that, of course, the court will have all the pamphlets available for its use, but the plaintiff will present for the court's convenience excerpts, pertinent excerpts of these pamphlets.

The Court: I want to know if counsel expects me to read all these documents.

Mr. Brock: I wouldn't expect anybody to do it.

I have a suggestion to make, if it meets with the court's approval, that probably the practical way to handle this will be for counsel for the plaintiff at the conclusion of the formal testimony to prepare an analysis of such portions as he thinks are pertinent and for us then to follow it up with ours and then at the conclusion of that and when your Honor has had a chance to go over that material, then to have the case argued, if that would meet the court's pleasure.

The Court: I am not going to have any oral argument in this matter, counsel. Inasmuch as we have to await on the Zuka case I am going to

(Testimony of William Ward Kimple.)

make you people brief the subject matter. I am going to make you earn your money.

Mr. Brock: Well, all right.

Mr. Gostin: Your Honor, I have been in this courtroom twice and neither time for any money.

The Court: You have heard me say more than once I can read better than I can listen.

Mr. Gostin: Yes.

The Court: I am not too good a listener when it comes to an oral argument.

Q. (By Mr. Dooley): Now, Mr. Kimple, will you please examine Exhibit 40 for identification which purports to be a pamphlet entitled "The Communist Party, a Manual on Organization," by J. Peters, and I ask the same question with regard to that exhibit. [235]

A. This little booklet was one—"The Communist Party, a Manual on Organization," was one that was kept in the unit and many party members kept it for their own personal use, but it has the laws and by-laws of the party and it wasn't one for educational or organizational purposes but merely kept the members informed of what the party line was.

Q. Will you, Mr. Kimple, examine Exhibit 41 for identification, which purports to be a pamphlet entitled "Problems of Leninism," by Joseph Stalin and I ask the same question with regard to that exhibit.

A. This is another one of the books from the Little Lenin Library and this one, "Problems of

(Testimony of William Ward Kimple.)

Leninism" is one that was used quite widely in the education of the party members in both the unit and in the schools.

Q. Will you examine Exhibit 42 for identification, which purports to be a pamphlet entitled "Stalin's Speeches on the American Communist Party" and answer the same question with regard to that exhibit?

A. This is another of the small pamphlets which was circulated in the United States and was for the mass distribution by the Communist Party memberships among the outsiders.

The Court: You know that to be a fact, do you?

The Witness: Yes.

Q. (By Mr. Dooley)? Now, will you examine Exhibit 43 for identification, which purports to be [236] a pamphlet entitled "State and Revolution" by V. I. Lenin and answer the same question with regard to that exhibit?

A. This is another of the Little Lenin Library and one that was used extensively in the education of the Communist Party members, both in the schools and in the units.

The Court: When you are talking about "units" you mean meetings?

The Witness: I mean the Communist Party unit meetings, sir, which only Communist Party members attended.

Q. (By Mr. Dooley): Will you examine Exhibit 44 which purports to be a pamphlet entitled

(Testimony of William Ward Kimple.)

"The Paris Commune" by V. I. Lenin and answer the same question with regard to that exhibit?

A. This is another of the Little Lenin Library, a pamphlet which was in distribution in the units and one from which I have heard speakers quote from many times. However, I do not have an independent recollection at this time of studying this in the unit.

Mr. Dooley: No further questions, your Honor.

The Court: Any cross examination?

Mr. Gostin: Yes, your Honor.

Mr. Brock: Yes, your Honor.

Mr. Gostin: Your Honor, I might state since this witness testified as to both defendants, we both will expect to cross examine as to different aspects.

The Court: What is that?

Mr. Gostin: Inasmuch as this witness testified as to both defendants both Mr. Brock and I will expect to cross examine him.

The Court: I hope you don't duplicate each other.

Mr. Brock: We have talked this over and we will try as hard as we can not to duplicate or be repetitious.

The Court: You may proceed.

Cross Examination

Q. (By Mr. Brock): Mr. Kimple, you joined the Communist Party in 1928, is that right?

A. That is right.

Q. At the time you joined how many members

(Testimony of William Ward Kimple.)

were there in the Communist Party in Los Angeles County? A. I would say less than 200.

Q. And in 1936 when you became educational director there were approximately 1,000, weren't there, members?

A. You said when I became educational director?

Q. I am sorry. I mean assistant to the membership director. A. That is correct.

Q. About 1,000? A. Approximately, yes.

Q. Up to the time you left in about September [238] of 1939 this had risen to somewhere just under 3,000, hadn't it? A. Yes, sir.

Q. Now, the fact is that during all the period of your membership there were people coming in and dropping out, weren't there? A. Yes, sir.

Q. There was a very, very sizable turnover?

A. That is correct.

Q. And that was one of the problems you were continually grappling with in your capacity as assistant membership director?

A. (No answer.)

Q. That is the problem of people coming in and dropping right out?

A. Well, that wasn't my particular job but that problem did exist.

Q. Well, it did concern you too in that you tried to see that people didn't join who wouldn't stay in?

Mr. Dooley: I object to that on the ground it is argumentative.

Mr. Brock: I would like to have an opportunity

(Testimony of William Ward Kimple.)

to finish my question first. It may be but I don't think so. May I start the question over again, your Honor?

The Court: Go ahead, proceed.

Q. (By Mr. Brock): The fact is that in your [239] capacity as assistant membership director you looked at a good many of the membership applications that came through and you among other people would discuss and sometimes veto applicants or consider vetoing them because you didn't think they would be stable members?

A. That is correct.

Q. And so on occasions—on some occasions you saw an application form from people who were members of church groups whom you didn't think would remain in very long, so as a loyal Communist you objected to their being taken in, didn't you? A. That is correct.

Q. You know the case I mean, don't you?

A. I do.

Mr. Brock: We have met before, your Honor.

The Court: Apparently.

Mr. Brock: Not socially.

Q. (By Mr. Brock): Now, Mr. Kimple, your testimony so far has not been based upon something that you were taught at some national school, that is like a school back in Washington or New York? It is just local meetings and little classes, isn't it? A. Yes, sir.

Q. And for the most part these little classes

(Testimony of William Ward Kimple.)

you attended were open to all—any Communist [240] who wanted to attend, weren't they?

A. To any Communist that wanted to attend?

Q. Yes. A. Yes.

Q. And some of the classes were even open to non-Communists, weren't they? A. Yes.

Q. In fact during some period of time a great many of the classes were wide open and the public was invited and urged to attend? A. Yes.

Q. Now, in these classes where the public attended is it your testimony that you were told then in those classes about force and violence and revolution?

A. I do not have an independent recollection of any meeting at this time at which the public was openly invited where that problem was presented.

Q. Were there differences within the classes in terms of material and the presentation of it according to the degree of rank in the party, to use the term loosely, of the people attending? Do I make it clear? It is even confused to me. Let me withdraw it.

Were there classes held for novitiates—that is beginning members and other classes held for senior members and so forth? [241] A. Yes.

Q. And would the material presented in these classes for different groups differ according to the groups? A. Yes.

Q. But it would be pretty correct to say that in all of these classes there was some type of a

(Testimony of William Ward Kimple.)

book or pamphlet used as a basis for study, would it not?

A. I believe that would be correct, yes, sir.

Q. There wasn't any occasion where somebody just got up and became the teacher without having some type of basis in some of the standard literature? A. Would you give that again?

Q. Let me strike it.

In all of your classes and associations you were urged to read all of the literature you have told us about, weren't you? A. Yes, we were.

Q. Plus a great deal of literature not spoken of yet, isn't that true? A. That is true.

Q. Can you tell the court about some of the other literature in terms of magazines and books that you were urged to read?

A. Well, one that comes to my mind right now is "Toward Soviet America" by William Z. Foster.

Q. All right. Did you also read books by Mr. Browder?

A. I remember that Mr. Browder had many books printed under his name, yes.

Q. And he was, during a sizable period of your membership, he was one of the top leaders in the Communist Party, was he not?

A. In the United States, yes.

Q. Yes. Now in your discussions about the purposes and objectives of the Communist Party you are not prepared to state that you ever had any discussion on this type of level with either of the Diamonds, are you?

(Testimony of William Ward Kimple.)

A. I do not have an independent recollection of ever discussing that problem with either of the Diamonds, no, sir.

Q. Now, have you on occasion during your membership had occasion to discuss with people who were dropping out of the Communist Party, the reasons for their dropping out?

A. Would you give me that one again?

Q. Did you ever during the time that you were a member have occasion to discuss with other members who were leaving the Communist Party, the nature of their leaving—the reasons for their leaving?

A. I have on occasions, yes.

Q. And weren't there many people who left because of idealogical differences—that they weren't in agreement [243] with what was happening?

A. Yes.

Q. And that was really the basis of the factional dispute you told the court about at the beginning, wasn't it?

A. Well, that dispute was in full swing when I joined the Communist Party and I would rather not state what started it or what they were actually fighting about.

Q. The fact is you really don't know, do you?

A. That is correct.

Q. So that all of this Foster faction meeting that you talked about attending, you really didn't quite know what the issue was, did you?

A. Basically, yes. That is, I did know what it

(Testimony of William Ward Kimple.)

basically was. They were fighting for control of the party.

Q. But you were not cognizant of the underlying ideology or ideological differences between the two groups?

A. At the time I think I knew basically what their differences were, yes.

Q. And those you have forgotten, is that it?

A. That is correct.

Q. Now, both of those groups founded their ideological beliefs upon the same set of books, didn't they?

A. I am not sure that they were founded on a set of books, no. I think it was more of a personal approach and opinions. [244]

Q. You mean the two men involved, Mr. Kimple?

A. Yes.

Q. But isn't it a fact regardless of whether this may have underlain the problem, that at least on the surface the problem was always discussed in terms of differences of viewpoint?

A. (No answer.)

Q. Let me withdraw that for a moment and try to make it clear.

When you met in that faction that you called the Foster faction they didn't discuss this difference between them by saying "Lovestone is a bad guy and we want to go with Foster," did they?

A. They said Lovestone was a bum guy, yes.

Q. But didn't they say he was a bum guy because of his differences in viewpoint?

(Testimony of William Ward Kimple.)

A. That I believe is correct, yes.

Q. And isn't it the fact that both of these groups claimed to look to the writings of Marx and Lenin and Stalin as their authority?

A. They quoted various things as their authority, yes. Now, whether or not it was the writings of Marx, Engels and Lenin I don't have a recollection of.

Q. Well, there wasn't either one of the groups that came out and said, "Well, Marx is wrong," is there? [245] A. That I don't remember.

Q. Or was there?

A. I don't remember that.

Q. Were there other split-offs or break-ups within the Communist Party during the time you were there?

A. I don't quite understand.

Q. Were there other groups—you have told us about the Lovestone thing—were there any other groups that broke away during the time you were a member?

A. Well, every once in a while someone would be labeled a Trotskyite.

Q. And that person would be expelled or leave, is that it?

A. Frequently unless they would conform.

Q. Now, you have also studied and become aware of the beliefs of these people that you labeled as "Trotskyites," haven't you?

A. I did not make a study of it, no, but when I

(Testimony of William Ward Kimple.)

was on the control commission I heard many charges of Trotskyism.

Q. Now, didn't these people that you have referred to as Trotskyites also look to the writings of Marx and Lenin as their authority?

A. I believe they would be more inclined toward Trotsky.

Q. Well, it is a fact, isn't it, Mr. Kimple, and you [246] as an expert know that Trotsky himself in his writing referred to Marx and Lenin?

A. I do not have an independent recollection of the writings of Trotsky.

Q. Didn't he claim to be and his followers claim to be Marxists?

A. I wasn't a Trotskyite, sir, and I wouldn't know.

Q. Wasn't it part of your job as a literature agent and educational director to know something about these other schools of thought such as Socialists and Trotskyites and so forth?

A. No, I can't agree to that.

Q. Wasn't that a pretty common matter of discussion—the differences and ideological viewpoints between the official Communist Party, the Socialites and the Trotskyites?

A. Well, the various leaders would frequently attempt to expose the Trotskyites as being wrong and expose the Socialists as being wrong.

Q. And weren't the arguments of both sides based on the claim that they were following Marx and Lenin?

(Testimony of William Ward Kimple.)

A. Well, the Communists did, yes.

Mr. Dooley: I object to it on the ground it has been asked and answered.

The Court: Let him answer it again.

The Witness: The Communists said they based their [247] deductions on the teachings of Marx and Lenin but as to whether or not the Socialists and the Trotskyites did I can't answer that.

Q. (By Mr. Brock): You have never read any of their material or attended any of their meetings?

A. Not during the time I was a Communist Party member.

Q. You mean you did before or after?

A. Before I was a Communist Party member I was in the I.W.W. and while in the I.W.W. I used to fraternize with the proletarian party which was a type of socialist. I believe they called them "left-wing Socialists" and the Communist Party I believe labeled them "Trotskyites."

Q. And that party you talked to—the proletarian party, they used the writings of Marx and Lenin, didn't they?

A. I don't know. I don't recall.

Q. Now, when you talked about closed meetings and only Communists being present, isn't it the fact that you inferred that the people present at these meetings were Communists because you were told that the meetings were closed?

A. That was just one of the reasons.

Q. Now, you have inferred and told the court that the meetings were closed based on the fact that

(Testimony of William Ward Kimple.)

somebody would stand at the door purportedly checking, isn't that right?

A. Person or persons, yes.

Q. And they would let people in on the basis of [248] whether they knew them or some other basis?

A. On the basis of whether they knew them or could be identified by somebody else who did know them.

Q. Now, when you went into the Communist Party in Los Angeles there were at that time that you know of two police agents within the Communist Party here, weren't there?

A. (No answer.)

Q. Yourself and your wife?

A. Pardon me. I was thinking of agencies. Yes.

Q. And there were others that were not known to you, isn't that so?

A. That is correct. That is, I presume there were others. I didn't know at the time.

Q. And there were some Federal Bureau of Investigation men also in the Communist Party at that time that were unknown to you?

A. I don't know.

Q. Haven't you learned subsequently that there were?

Mr. Dooley: I object on the ground that it would be irrelevant and immaterial as to what he learned subsequently.

The Court: Objection overruled.

(No answer.)

(Testimony of William Ward Kimple.)

Q. (By Mr. Brock): Can you answer the question?

Mr. Dooley: And on the ground it is hearsay in addition to that—hearsay testimony. [249]

The Court: I will let him answer if he knows.

The Witness: I can't at this moment recall any FBI agents that were in the party when I was in there that I can think of. I may be overlooking something but at this moment I don't recall them.

Q. (By Mr. Brock): All right. At any rate the police agents who were members paid dues, carried books and attended closed meetings, did they not?

Mr. Dooley: Object on the ground the question is ambiguous and also contains three questions in one.

Mr. Brock: I can break it down but I don't see much point in it.

The Court: He so testified. I don't see what difference it makes.

Mr. Brock: I assumed he had.

Q. (By Mr. Brock): Now, you informed the court that these Communist meetings were closed. Now, is it not a fact that there were a great many meetings to which outside people could be and were invited?

A. The Communist Party sponsored many meetings to which the outside public was invited, yes.

Q. And at these more or less open meetings there would be discussion of educational material just as in a closed meeting, is that right?

A. There would be lectures on Communism—

(Testimony of William Ward Kimple.)

lectures [250] on the Communist approach to various problems, yes.

Q. So that when you told the court about closed meetings you did not mean to imply that all the meetings were closed? A. No, sir.

Q. Now, you did in discussing closed meetings, talk about security measures and that consisted, I take it, of somebody standing at the door and watching people come in?

A. That is correct.

Q. Now, you have told the court also about a meeting in Long Beach. How many people attended that meeting?

A. If I remember correctly somewhere in the neighborhood of two or three hundred.

Q. And that was held in an auditorium of some kind on Pine Avenue?

A. That is my best recollection.

Q. And that was a rented auditorium?

A. I presume so.

Q. And in discussing that on direct——

The Court: Was Mr. Diamond at that meeting?

The Witness: Mr. Diamond was.

Q. (By Mr. Brock): He previously testified to that. In discussing that in your direct examination you referred to that as one of the tightest closed meetings ever held. Did that mean that the other meetings were not so closed? [251]

A. No, sir.

Q. They were fully closed, weren't they, these other meetings?

(Testimony of William Ward Kimple.)

A. The other meetings were closed, fully closed, yes, sir.

Q. So you really didn't mean anything by saying this was one of the tightest closed meetings?

A. I thought I meant something by it, yes.

Q. Can you explain it?

A. In that the place of the meeting was very guarded. It was not known by very many people where the meeting was going to be, whereas in the other meetings it was fairly well known among the members where the meeting was going to be and when.

Q. Now, you knew the Diamonds both as in an official capacity and personally, is that correct?

A. That is correct.

Q. Do you mean by that you visited back and forth at each other's homes on a social basis?

A. I do not have a recollection of the Diamonds ever being at my home but I have been to their home and I have afforded them transportation in my car many times.

Q. It was no secret to you that their true names were David and Freeda Diamond, was it?

A. No, sir. [252]

Q. And that was the name by which they were addressed by all their friends within the party, was it not? A. Yes, sir.

Q. The only other names you have seen are just the names that found their way on the party records somewhere along the line with their true names, isn't it? A. Yes.

(Testimony of William Ward Kimple.)

Q. And so far as you know in terms of actual living they didn't rely or use the other name at all?

A. No, only on the official Communist Party membership books.

Q. Now, you were asked to leave the Communist Party in about September of 1939, Mr. Kimple?

A. About that time.

Q. And was that fact so far as you know publicized to the general Communist party membership?

A. It is my belief that only a very few people knew that we had been requested to leave.

Q. By "we" you mean you and Mrs. Osvald?

A. Yes.

Q. That is your wife?

A. Who later became my wife.

Q. Weren't all of the officials of any stature at all in the Communist Party warned against you right after your dismissal? [253]

A. Well, not being in there to know I couldn't say for sure. The only thing I can go by is I would see Communist Party members, many of them quite prominent and active, and they never shunned me or made any motion that would indicate that they thought I was out of the party. They were all just as friendly and nice to me as could be with the exception of a few leaders.

Q. None ever committed an act of violence on you? A. No, sir.

Q. Now, on this matter of names. The fact is that it was a pretty informal matter as to whether anybody accompanied his true name with an alias

(Testimony of William Ward Kimple.)

or isn't that so—in other words some did and the party didn't really care?

A. In the plain rank and file of the members of the Communist Party it was left pretty much up to their discretion as to whether or not they wanted to use a party name.

Q. When the, if I may use the term, "police terror" was on it was suggested that it was wiser to use a party name and have your Communist Party membership book issued in that name?

A. In case Hines should find it it would be a little more trouble for him to lining up the individual. However, in some cases of a well-known or active Communist Party member it was sometimes suggested quite politely that they should use a party name. [254]

Q. Now, on all of the membership applications you in addition to other tasks, made out a 3 by 5 file card for each member, did you not?

A. Yes, sir.

Q. And in addition to making the one which you made as an official record you made a duplicate for Captain Hines? A. That is correct.

Q. Of every one of them?

A. I don't believe I missed any.

Q. And sometimes you would make other duplicates for other purposes?

A. I believe the answer to that is yes, if I follow your question correctly.

Q. Sometimes you would make two or three copies of a card in order to cross-index it, wouldn't

(Testimony of William Ward Kimple.)

you? A. Yes, sir.

Q. Now, all of the 3 by 5 cards plus a large number of cancelled or returned rather, membership books from 1936 through 1939 that you know of were turned over to Captain Hines, weren't they?

A. There were quite a few of them got in his hands.

Q. As far as you could determine it all of them did, didn't they? A. No.

Q. Well, the 3 by 5's did. That is clear, isn't it? [255]

Mr. Dooley: Are you referring to copies?

Mr. Brock: Copies of the 3 by 5 card.

The Witness: The 3 by 5 card as far as I was able to determine I got a copy into Hines' hands, yes.

Q. (By Mr. Brock): Now, in addition to the 3 by 5's at periodic intervals the members would turn back their old books supposedly for destruction, wouldn't they? That is party books like the one in evidence at the end of each year when the Communist Party members were registered and given their new books for the coming year the old one was picked up and returned to the membership department? A. Yes.

Q. And that was your department?

A. Right.

Q. And you got a great many of those books and turned them over to Captain Hines?

A. That is correct.

(Testimony of William Ward Kimple.)

Q. Do you remember if you turned over to him the books that have been placed in evidence in this case?

A. I do not have an independent recollection of handing these two books over to him.

Q. You have no other suggestion as to where the books may have been in the interval, I take it?

A. I don't believe I understand your question.

Q. Well, you have no other idea as to what you may [256] have done with these books if you didn't turn them in to Hines? Now, I am talking about these specific books you have looked at in this case.

A. I still don't quite follow your question.

Q. Let me rephrase it, Mr. Kimple. Let us just consider the books in this case, the Diamond books that have been offered in evidence.

A. Yes.

Q. Now, presumably those books upon being turned in for new books went into your department, didn't they? A. Yes.

Mr. Dooley: I object to the question if it is placed on a presumably basis. If that is it then it is asking for a conclusion and an inference that has no place in this record—what presumably occurred.

The Court: I think he is trying to find out how these books got here. Isn't that correct?

Mr. Brock: Yes, your Honor. I would like to know that.

Q. (By Mr. Brock): Now then, Mr. Kimple, if these books got to you you turned them in to Captain Hines, didn't you? A. Not all of them.

(Testimony of William Ward Kimple.)

Q. What did you do with those you didn't turn in to him?

A. Turned them in to the membership director.

Q. Who did what with them?

A. That I am not positive of.

Q. But she was supposed to destroy them, wasn't she?

A. In some cases, yes, and in other cases I don't know.

Q. You mean there was a rule that some books got destroyed and others did not?

A. I know that there was a rule the 1937 books were to have been destroyed.

Q. And you don't know of any rule regarding the 1936 and 1938 books?

A. I don't recall such a rule in those two instances.

Q. Now, it is true, Mr. Kimple, that during most of the period of your membership in the Communist Party, the Communist Party was on the ballot and ran candidates for many offices in the State of California, is it not?

A. To the best of my knowledge I believe the Communist Party was on the ballot at most elections, yes, sir.

Q. And in most elections in any event they had candidates publicly running as Communists and you and the other Communist members so far as you know, got out publicly to support these candidates, did you not? A. We did.

Q. There was no attempt to disguise the fact

(Testimony of William Ward Kimple.)

that they were running as Communists and that Communists were [258] supporting them as Communists, was there? A. That is true.

Q. You have no present memory of any reading of the literature that we could loosely call "Marxist-Leninist" literature, have you?

A. I recall that I spent a good many hours during my time in the Communist Party reading from various of these pamphlets and others.

Q. Would you say that you studied some of them?

The Court: What do you mean by "study"?

Mr. Brock: Well, I take it study is a little more intensive than reading. I guess people have various ways of doing it but what I am trying to get at, Mr. Kimple, is that you did something more than cursory reading of these things?

The Witness: I merely acquainted myself with the contents of the books or portions of the books in order to enable me to carry on my function in the party. I made no attempt to educate myself along Communistic lines. I tried to get it and then forget it as quickly as possible.

Q. (By Mr. Brock): And you did this unpleasant task because you knew that in discussions in unit meetings and so forth you would have to quote from different parts of the literature in order to carry a point, isn't that so?

A. Well, you use the term "quote" there.

Q. I don't mean literally quote, Mr. Kimple. I mean [259] to refer——

(Testimony of William Ward Kimple.)

A. If you use it loosely, yes.

Q. In other words, these books that were referred to and other books were looked to as a source of opinion, weren't they? A. Yes, sir.

Q. So that when you would have a dispute somebody would say, "Well, Marx said this" or "Lenin said this," isn't that right?

A. I have heard that many times.

Q. And you have heard some disputes, haven't you, and disagreements as to what was said and what theory should be right?

A. At this particular moment I do not have a recollection of disputes. I have a definite recollection of hearing many times discussions where the leaders would say "Lenin said so and so" or "Stalin said so and so" and refer to a certain passage from a certain book.

The Court: We will take our afternoon recess of five minutes at this time.

(Short recess.)

The Court: You may proceed.

Q. (By Mr. Brock): Mr. Kimple, you would not now be prepared to take any one of these books that have been placed in evidence and tell this court the central theme even of [260] the book, would you? A. No, sir.

Q. And that would be true of any book circulated during this period concerning Marxist or Lenin's philosophy, would it not?

A. Well, there are one or two of those pam-

(Testimony of William Ward Kimple.)

phlets here that I have a hazy recollection of what was in them.

Q. Which ones are they?

A. Like "Why Communism."

Q. You are free to look at them if you want to, Mr. Kimple.

A. "The Communist Party in Action" are the two in my mind now. They are the only two in there that I have much of a hazy recollection of.

Q. Now, all of these books that you have talked about were sold to the public, weren't they?

A. Yes.

Q. There were none of these books that were kept for any type of secret distribution?

A. No. I don't recall any of them that were called secret.

Q. Did it not on occasion happen that a pamphlet or booklet would be written and then shortly afterwards disapproved by the Communist Party?

A. That has a faint familiar ring of one or two but [261] I couldn't tell you which ones they were or where.

Q. It did happen to the book sometimes referred to as Peter's Manual, didn't it, but that was withdrawn very shortly after it was written.

A. I don't recall it being withdrawn. We had it in our unit.

Q. Isn't it the fact it was written in 1936 and withdrawn just a little while after that?

A. I don't recall that.

(Testimony of William Ward Kimple.)

Q. You don't recall which books this did happen to then, do you? A. No.

Q. But it did happen on occasion?

A. Well, as I tell you it has a faint ring but I couldn't name it.

Q. Now, in addition to turning over to Captain Hines of the local so-called Red Squad, the names and books of members you also turned over to him literature, did you not? A. I did.

Q. So that he acquired at least a copy of every piece of literature that was officially circulated, did he not?

A. As to the best of my ability I kept him pretty well supplied with most of the literature.

Q. And would that include the literature you have testified to here today? [262]

A. Many of them, yes.

Q. Now, I call your attention specifically to the Exhibit No. 29, which is called "Two Decades of Progress." Would you look at that exhibit, Mr. Kimple? It is there before us.

A. Yes, I see it. I have a very good mental picture of that one.

Q. Now, that exhibit was turned over to Captain Hines, was it not? A. Yes.

Q. And that exhibit contained the names of, if not most, in any event a great many members of the Communist Party at that period?

A. That I believe is correct.

Q. And it contained in many instances the dates and places where different units met, didn't it?

(Testimony of William Ward Kimple.)

A. I believe so, yes.

Q. Well, do you want to look at it, Mr. Kimple?

A. Yes.

The Court: The book will speak for itself.

Mr. Brock: I just want him to know—I am sure he is not trying to be evasive but I want a clear answer on it. It did so list, didn't it, Mr. Kimple?

Mr. Dooley: I raise an objection to the question that the document speaks for itself. [263]

The Court: I think that is true. You may know but how the witness would know without reading the entire book I don't know and I don't want him to take up the time to read the entire book.

Mr. Brock: I just wanted him to take a look at it if he needs to.

Mr. Dooley: He couldn't answer the question properly without going through the entire book.

Mr. Brock: I think he can determine—I think there is no doubt about it, Mr. Kimple, that it did list the meeting places, the dates of meetings of the various units.

The Witness: The places and meeting night.

Q. (By Mr. Brock): Now, you said on direct testimony you helped compile the book. What did you do in connection with it?

A. I worked with——

Q. Well, you didn't write it, that is what I mean.

A. No, no, I didn't do any of the writing.

Q. You did the leg work?

A. Leg work is right.

(Testimony of William Ward Kimple.)

Q. Was that book the same book that is referred to as the year book or was that another book called the year book?

Mr. Dooley: The witness has not testified concerning a year book. [264]

Mr. Brock: I hope he will. It is referred to in here. I know he hasn't but it is referred to in this book and I want to find out about it.

The Court: I think it is a proper question, counsel.

The Witness: I never heard "Two Decades of Progress" called the "Year Book."

Q. (By Mr. Brock): Well, there is a reference —if you want to look just at page 39 of that, Mr. Kimple, there is a reference to a year book.

A. I see that reference.

Q. It doesn't mean anything to you now?

A. No, I am sorry to say it doesn't.

Q. Now, there are in that book Exhibit 29, a number of names of people. Were these people all members or were some of them non-members?

Mr. Dooley: Your Honor, the book contains innumerable names and the witness would have to refer to a particular name to answer the question intelligently.

Mr. Brock: He may or may not.

Mr. Dooley: So I will object to the question as being ambiguous and vague and beyond the scope of an intelligible answer.

Mr. Brock: He may or may not. If he does he alone can say so.

(Testimony of William Ward Kimple.)

The Court: Do you know whether or not there are names [265] in there who are not Communist Party members?

The Witness: I do know there are names in there who are not Communist Party members.

Mr. Brock: That is what I wanted to know.

I would urge again to the court that in view of our not having been furnished the names of the witnesses in advance I am unable to adequately cross examine and at this point I have no further questions to ask the witness.

Cross Examination

Q. (By Mr. Gostin): Mr. Kimple, I believe you testified before that in addition to the books that you have already identified, you were told in the Communist Party meetings that there were other books too that should be read and distributed, is that correct? A. That is correct.

Q. And among those other books that you were told to read and distribute, would one of them be Das Capital by Karl Marx?

A. Das Capital?

Q. Yes.

A. That was one that was in the library, yes.

Mr. Gostin: Will you mark this book for identification?

The Clerk: Defendants' Exhibit A for identification. [266]

(The exhibit referred to was marked Defendants' Exhibit A for identification.)

(Testimony of William Ward Kimple.)

Mr. Gostin: Will you mark these too, please?

Q. (By Mr. Gostin): Mr. Kimple, I show you a copy of Capital by Karl Marx and ask you if this appears to be a copy or a similar copy of a book that you were urged to read?

A. Other than the name, sir, I can't identify it. I do not—in fact I am certain I never read that book.

Q. Well, you didn't read many of the books that were mentioned before, did you, this morning?

A. I browsed through them as I testified in part, but Das Capital I don't have an independent recollection at this time of reading it.

Q. Mr. Kimple, did you ever look at a copy of Capital in English—not in the German translation?

A. I never looked at it in the German translation because I couldn't read it.

Q. And you were, however, told to read excerpts or read Capital, were you not, while in the Communist Party?

A. We were told that that was a good book to read, yes, one with which Communist Party members should acquaint themselves.

Q. Did you ever have copies of that in what you referred to before as "your library?"

A. I believe so. [267]

Q. And does it appear that this a similar copy to the ones you had in your library?

A. No, that doesn't look familiar.

Q. Well, can you tell me what is not familiar about it?

(Testimony of William Ward Kimple.)

A. Well, it just doesn't strike me like these others do. The name is the only thing that is familiar to me.

Q. Is it the particular binding that is not familiar to you, is that it?

A. Well, the set-up, as I say, it doesn't ring a bell with me.

Mr. Gostin: I would like to ask counsel for the Government if he will stipulate that this copy of the book I hold in my hand, "Capital," Modern Library Edition, is the book "Capital" written by Marx and Engels and would be similar to the "Capital" referred to in Communist Party meetings?

Mr. Dooley: May I look at this for just a moment?

The Court: I don't want to take time now for anybody to read a book.

Mr. Dooley: I imagine this is the book that was written. The index indicates it was written by Karl Marx but whether it is the one referred to I don't know.

Mr. Gostin: I have had the same difficulty as counsel for the Government in obtaining certain copies of this book, which may have been in print at that time. However, I think [268] they are all the same books.

Mr. Dooley: I will stipulate that this is a copy of "Capital" written by Karl Marx and that is just about as far as I can go.

Mr. Gostin: All right. Thank you, Mr. Dooley.

(Testimony of William Ward Kimple.)

Q. (By Mr. Gostin): Now were you also, Mr. Kimple, asked to read writings of Lenin?

A. Would you please turn around and face me so I can hear you?

Q. I am sorry. Were you also asked to read writings of Lenin? A. Yes.

Q. Were you also asked to read and circulate a pamphlet called "Socialism to Communism in the Soviet Union" by Joseph Stalin?

A. Yes. That was one that was circulated. I remember that name.

Q. And "The Right of Nations to Self Determination" by Lenin. Does that sound familiar to you?

A. That one doesn't sound familiar to me right now. If I can see it maybe I can tell you.

Q. I will show you all these documents in a moment. I think we might speed it up by asking you about them all first.

Were you also asked to read and circulate copies of a [269] pamphlet called "United Front Against Fascism" by Dimitroff? A. Yes.

Q. Were you asked to read and circulate copies of the "History of the Communist Party of the Soviet Union?" A. Who is that by?

Q. I believe it is edited by Stalin and part of the Central Commission of the Communist Party of the Soviet Union.

A. I am not positive of that one.

Q. Do you recall being asked to read and circulate copies of books written by Earl Browder?

(Testimony of William Ward Kimple.)

A. Yes, sir.

Q. Do you recall one called the "People's Front?" A. May I see that?

Q. Yes. I would like to show you now all the books I have just asked you about. They have been marked Defendants' Exhibits B through G and ask you to look them over and see if by looking them over they appear familiar to you?

A. The one, "The Right of Nations to Self Determination," that I don't recall.

Q. That is Exhibit D?

A. Yes. This one "The United Front Against Fascism" I do recall.

Q. That is marked Exhibit E.

A. This book, "History of the Communist Party of the [270] Soviet Union" as a book is not familiar to me but as I look over the chapters in it, the headings of the chapters sound familiar to lessons that I had preached to me.

Q. In other words you have had classes in which this book was used?

A. Well, I have been in classes to which those chapters were quoted. Now, whether or not it is from that book I don't know.

Q. And this is marked Exhibit F.

A. "Lenin's Selected Works" I do not recognize that.

Q. But you were asked to read Lenin's writings, were you not? A. Yes, sir.

Q. You were advised to read them?

A. Yes, sir.

(Testimony of William Ward Kimple.)

Q. And they were referred to in classes that you attended? A. That particular book?

Q. That particular one, yes.

A. That particular one I don't recall.

Q. That is marked Exhibit B.

The Witness: This one "From Socialism to Communism in the Soviet Union" marked No. C is familiar to me.

"The People's Front," Exhibit G, I do not have too clear a recollection of that but I believe that I have seen [271] that book.

Q. That was discussed, was it not, generally?

A. I believe so.

Q. And in addition to these books and the ones previously introduced there were, of course, a whole host of others that were mentioned at one time or another to you in classes that you attended?

A. That were mentioned to me during my course of membership in the Communist Party, yes, sir.

Q. And readings were recommended from various books? A. Yes, sir.

Q. And you were advised to, as a matter of fact, read as much literature as you could?

A. (No answer.)

Q. What is your answer to that question?

A. Yes.

Q. Now, as a matter of fact, Mr. Kimple, can you now tell us which Marx's and Lenin's works have you actually read?

The Court: I didn't understand the question.

(Testimony of William Ward Kimple.)

Q. (By Mr. Gostin): I would like to know what Marx's and Lenin's books he has actually read.

A. I do not have a definite recollection of ever reading any particular one of these through from cover to cover. [272]

Q. Well, do you have a definite recollection of having read any other book cover to cover from a Marxist or Leninist source that we have not mentioned here today? A. No, I don't.

Q. Now, these books that were introduced here as exhibits and shown to you as exhibits today, from which of those books have you read certain portions?

A. Well, most of the Lenin Little Library I have read or may I amend that to say what I said a few moments ago? This book "Why Communism" I did read that.

Q. You did read that? A. Yes.

Q. Are you basing your knowledge of Marxism and Leninism on what you read in that pamphlet?

A. No, sir. May I state, sir, I do not claim to be a Marxist or Leninist.

Q. I say your knowledge of Marxism and Leninism is based on that? Are you basing your knowledge on Marxism and Leninism on what you found in the pamphlets? A. No, sir.

Q. Are you basing your knowledge of Marxism and Leninism on any of your readings?

A. Yes, on excerpts from here and there as I have testified before here, sir. I do not have an independent recollection of the names of these books

(Testimony of William Ward Kimple:)

or just what parts [273] I read and at just what time, but I do remember that these books were used by me during some of the time to acquaint myself with the Communist program in order to carry on my Communist Party work.

Q. Did you also at any time report on the contents of any of these books or pamphlets to your superior officer, Captain Hines?

The Court: I just can't hear you, counsel.

Mr. Gostin: I am sorry, your Honor. Perhaps my voice is beginning to fail.

The Court: I hope it fails entirely, counsel.

Mr. Gostin: Does your Honor mean by that that you desire me to curtail cross examination at this point?

The Court: What?

Mr. Gostin: Does your Honor mean by that that you desire me to stop cross examination at this point?

The Court: No, no, that was just a facetious comment.

Q. (By Mr. Gostin): Did you hear the question?

The Court: I would like to have you speak a little louder.

Mr. Gostin: I shall try, your Honor.

The Witness: I am sorry, sir, I didn't hear you, either.

Mr. Gostin: Mr. Reporter, could you read the question?

(Question read as follows: "Q. Did you

(Testimony of William Ward Kimple.)

also at any time report on the contents of any of these books or pamphlets to your superior officer, Captain Hines?")

The Witness: I do not have an independent recollection of reporting on the contents of any of the literature.

Q. (By Mr. Gostin): Now, Mr. Kimple, in these Communist Party meetings that you stated you attended, am I correct in assuming that at least a portion of these meetings would be devoted to a discussion of literature?

A. The Communist Party unit meetings as a rule were divided half and half. The first half was for a business session and the last half for an educational session.

Q. Now, the business session as you put it, that would be devoted to a discussion of certain current topical things, would it not?

A. Well, new business and unfinished business—work to be done and so forth.

Q. Well, for example, during your course of membership in the Communist Party among the things you discussed in unit meetings were ways and means of advancing racial and religious equality, was it not?

A. That was a question discussed considerably.

Q. And that was a part of the agenda of the business portions of the meetings?

A. No. That came more, I believe, in the educational discussion with the exception of the racial equality issue. [275] Very often we worked among

(Testimony of William Ward Kimple.)

the Negroes which was a Communist Party assignment.

Q. It was a part of your Communist Party assignment to work among the Negroes for racial equality?

A. That was one of the topics which we were told to advance to the Negroes.

Q. You were also told, were you not, to advance such things as working for relief?

A. You are speaking now during the depression?

Q. Yes. A. Yes, that is right.

Q. And to work for such things as greater social security and things of that sort?

A. Yes, basically, that is right.

Q. Now, Mr. Kimple, I believe you stated that you were a consultant at the present time with the Immigration Service? A. Yes, part time.

Q. Do you receive any pay for your services in that respect? A. Yes, sir.

Q. And what is the rate of pay that you receive?

A. $25 a day.

Q. How long have you been engaged as a consultant?

A. I believe I first was engaged—well, you could [276] say, I guess, 1950. However, I don't recall being paid in 1950. I think it was 1951 before I started getting any money.

Q. Well, since that time can you estimate the approximate amount of money you have received

(Testimony of William Ward Kimple.)

from the Immigration Service for your services as a consultant?

A. During 1951 I think until about the middle of 1952 I had four days a month and then from 1952 until now it has been almost 10 days a month. Most of the months have been 10 days. A few have been less and none more.

Q. And your consultations have always been in respect to your activities in the Communist Party, is that correct? A. That is correct.

Q. And I take it you have appeared in court before in that regard? A. Yes, sir.

Q. And in administrative hearings before various administrative bodies? A. Yes, sir

Q. And you have received extra pay for those occasions?

A. When I am on the witness stand, yes, I receive additional pay.

Q. When you first began working as a consultant with the Immigration Service that was for the purpose of also advising them as to your experience in the Communist Party, [277] was it not?

A. I do not quite understand that question.

Q. Well, when you first were retained by the Immigration Service as a consultant that was for the purpose of giving them your knowledge and experience which you gained as a member of the Communist Party? A. Yes.

Mr. Gostin: Your Honor, I too am in the position of liking very much to go into a much more exhaustive cross examination concerning this wit-

(Testimony of William Ward Kimple.)

ness' knowledge concerning the various documents.

I feel I cannot on the ground of having been unable to have his deposition taken beforehand. However, following the court's suggestion this morning I would like to at this point make a motion to strike the testimony of this witness concerning Marxism, Leninism—their works and his understanding of what the Communist Party taught as stated before this morning.

We didn't feel he was qualified as an expert and your Honor suggested that we might reserve this until the conclusion of his testimony and then make a motion to strike. I would like to do that at this time.

Mr. Brock: And I join in that motion.

The Court: The motion will be denied. Is there any further examination of this witness? [278]

Mr. Dooley: I have one or two questions, your Honor.

The Court: Then go ahead.

Redirect Examination

Q. (By Mr. Dooley): You testified I believe, Mr. Kimple, concerning the Communist Party as being on the ballots during your membership.

Were you taught anything while in the party as to the meaning of the Communist Party being on the ballot?

Mr. Brock: To which I will object on the ground that, first, it asks for hearsay and secondly it asks for a conclusion of the witness and thirdly it is not proper redirect examination.

The Court: I don't see what is to be added by answering that question, counsel. We all know the Communist Party was on the ballot in California for a number of years.

Mr. Dooley: Yes, your Honor. I was thinking—I am not sure of the answer that I would get, but that the witness during his classes in the Communist Party and during his conversations with other leaders of the party, could inform the court as to the purpose, if any, of that and the purpose, if any, with respect to certain other matters that were brought out on cross examination.

The Court: I don't think anything can be gained by it, counsel. [279]

examination somewhat if the witness knows.

The Court: I will sustain the objection.

Mr. Dooley: Thank you, your Honor.

The Court: Is that all?

Mr. Dooley: That is all, your Honor. Oh, I would like to offer in evidence, your Honor——

The Court: Let us wait until we hear all the evidence you are going to put on and then both sides will have a number of exhibits that you will want to introduce into evidence.

Mr. Dooley: No further questions of this witness, your Honor.

Mr. Brock: We have none.

The Court: That is all for the time being.

The Witness: Thank you.

The Court: Do you have a short witness?

Mr. Dooley: No, I haven't.

Mr. Brock: There are no such things.

Mr. Dooley: I anticipated that this witness would carry through until 4:00 o'clock so I didn't have the next witness come in this afternoon.

I do have these exhibits to offer.

The Court: I understand that two of you gentlemen have to be in the Circuit Court tomorrow morning.

Mr. Gostin: That is correct.

The Court: And you are first on the calendar, as I [280] understand it.

Mr. Gostin: Yes, I think we are. We looked at the Journal and I think we are No. 1 on the calendar.

The Court: Will you inform the court that this court is standing in abeyance until you get through?

Mr. Dooley: Yes.

The Court: I think at this time we will take a recess until 10:00 o'clock tomorrow morning with the understanding the court will stand by until counsel appears.

Mr. Gostin: Yes. The argument begins up there or at least the court opens at 10:00. I don't know if the court is aware that Mr. Brock is not engaged in that argument.

Mr. Brock: I am an innocent bystander. I had hoped to be able to do some work in the office. I don't want to discommode your Honor's calendar.

The Court: The only thing is very often arguments up there are very short.

Mr. Brock: Not when Mr. Gostin argues. He promised me it will be a long argument. Would 11:00 o'clock be an inconvenience to the court?

The Court: I happen to know some of the circuit judges. I don't know if it will be very long.

Mr. Brock: Would 11:00 o'clock be too much of an inconvenience to the court? It would certainly help me.

The Court: The only thing is, counsel, I want to get [281] as far along with this case as I can this week, and if there are any witnesses called here and you want to be prepared for cross examination, I will not deny counsel recalling a witness for further cross examination, because the court is going to be dark next week and I want to get as much in as I can this week.

Mr. Gostin: I don't know, your Honor. It may possibly be finished by the end of the week. It is kind of hard to estimate the length of time it might run.

The Court: Well, that is too good to be true, isn't it?

Mr. Gostin: No, it is quite possible.

The Court: How many more witnesses have you?

Mr. Dooley: Well, I have about four more witnesses, your Honor.

The Court: Are they all long witnesses?

Mr. Dooley: No. I may have five more. Two of them are the handwriting and fingerprint experts.

Mr. Brock: They won't be more than two or three minutes.

Mr. Dooley: They won't be long at all and the other two may be longer and if I have three it will not be too long. So actually right now I probably won't have but two more long witnesses.

The Court: May I suggest that you have your short witnesses tomorrow so we can get them out of the way?

Mr. Dooley: Well, I have already made arrangements, more [282] or less, to get them. Of course I made arrangements to use the handwriting experts Friday morning, if that is all right with the court, or Friday afternoon.

Mr. Brock: They won't take but two or three minutes each, I don't believe.

Mr. Dooley: They will not take long.

The Court: We will take a recess until 10:30 tomorrow morning with the understanding if you people are not through up there by that time, as I stated before knowing the personnel of the Circuit Court who are going to sit tomorrow, I don't think you will have very lengthy arguments.

I don't know what your case is about but I don't imagine the arguments will be very long or that the court will listen very long to either one of you.

Mr. Brock: 10:30 will help me.

The Court: Very well, we will take a recess at this time until 10:30 o'clock tomorrow morning.

(Whereupon at 3:55 o'clock p.m. the court was recessed until 10:30 o'clock a.m., Thursday, March 1st, 1956.) [283]

Thursday, March 1, 1956—11:00 A.M.

The Court: You may proceed, gentlemen.

Mr. Dooley: Your Honor, I would like to state for the record that I turned another subpoena over

to the marshal for service upon the defendants for today and apparently without results.

The plaintiff calls as it next witness Mr. John L. Leech.

JOHN L. LEECH

called as a witness on behalf of the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: John L. Leech.

Mr. Gostin: Your Honor, we would like to make the same objection to any testimony from this witness as made to the testimony of Mr. Kimple, and that is that his name was not among those given to us as one of those having knowledge of the facts.

Mr. Brock: And we join in that objection.

The Court: Objection overruled.

Direct Examination

Q. (By Mr. Dooley): Where do you reside, Mr. Leech?

A. At 5515 West 117th Street, Inglewood.

Q. What is your business or profession? [287]

A. At the present time I am employed in an aircraft factory as a contract co-ordinator.

Q. Were you ever a member of the Communist Party of the United States? A. Yes, sir.

Q. Where?

A. In the City of Los Angeles, Los Angeles County.

Q. When did you join the Communist Party of the United States? A. About September, 1930.

Q. And how long did you remain a member?

(Testimony of John L. Leech.)

A. Until either April or May of 1937.

Q. Are you now a member of the Communist Party of the United States? A. No, sir.

Q. While you were a member of the Communist Party, Mr. Leech, did you hold any official positions in the party? A. Yes, sir.

Q. What positions, what official positions, did you hold?

A. I held the position of unit organizer in the south part of Los Angeles for a period of time.

I then held the position of subsection organizer in the same general area for a period of time.

Then I was assigned to the same position, that of subsection [288] organizer in the Manchester subsection of the Communist Party in South Los Angeles.

Next it was the position of subsection organizer in the Goodyear subsection of the Communist Party in Los Angeles.

The next position was that of Los Angeles section organizational secretary and then the final position on a local scale was that of Los Angeles County executive secretary.

Q. In the echelons or positions in Los Angeles County what place does the Los Angeles County executive secretary occupy?

A. At the period in which I was active I would have been the ranking—it would have been the ranking position in the Communist Party in this area.

(Testimony of John L. Leech.)

Q. Now, during what periods of time did you occupy the positions that you have named?

A. The position of unit organizer for a matter of two or three months at about the start of 1931.

Shortly after that the position of subsection organizer in what was known as the Firestone subsection of the Communist Party for about the balance of the year 1931. Perhaps a little less, sir.

Then I went into the Manchester subsection of the Communist Party and I think I was there about six months.

In the Goodyear subsection I think, sir, I remained until [289] either the end of 1932 or the very early part of 1933.

In about February of 1933 I was appointed to the position of Los Angeles County organizational secretary and I stayed in that position until about November, 1934.

From approximately mid-November of 1934 until about November 20 of 1936 I was known variously as the Los Angeles County organizer and then in the last stages as the Los Angeles County executive secretary. The positions were synonymous.

Q. Now, what were the duties of your position as unit organizer?

A. To be the party leader of a group of people in a unit.

The unit comprised, oh, a shop or factory basis and on a neighborhood basis.

The unit of which I was an organizer was a

(Testimony of John L. Leech.)

neighborhood unit and consisted of from 15 to 20 members. There was some variation.

I was to see that the unit held its meetings regularly; that they discussed the party program; that they circulated and read the Communist Party press and to work in the neighborhood to gain recruits.

Q. And as subsection organizer what were your duties?

A. The subsection was a geographical division of the Los Angeles section of the Communist Party, of which at that [290] time there were 13.

The subsection consisted generally of approximately 20 units in a given area and as subsection organizer it was my responsibility to offer political leadership and organizational leadership to the collective units in this territory.

Q. And as Los Angeles County executive secretary what were your duties?

A. As executive secretary I was recognized as the face of the Communist Party in this area, the political leader and my responsibility was to originate the campaigns of the Communist Party in conformity with the general plan of Communism; to see that the party generally functioned as a group and that it continued to contain or continued to maintain contact with the mass organizations with which the party worked in the area.

Q. Do you know the defendant David Diamond?

A. Yes, sir.

Mr. Dooley: Will the clerk please give the witness Exhibit 7?

(Testimony of John L. Leech.)

(Document handed to the witness.)

Q. (By Mr. Dooley): Mr. Leech, will you examine the photograph appearing on Plaintiff's Exhibit 7 and tell the court whether you can identify the person represented by that photograph, Exhibit 7, which purports to be a certificate of citizenship?

A. Yes. However, I recall David Diamond as looking somewhat younger when I saw him than he appears to be in this picture.

Q. Now, how long have you know the defendant David Diamond?

A. Periodically—well, I think, sir, the best way I could say would be continuously from about the start of 1931 until approximately the end of 1936, but that there were considerable periods of time when I do not recall having had contact with him.

Q. Now, do you know the defendant Freeda Diamond? A. Mr. Diamond's wife, yes, sir.

Mr. Dooley: Will the clerk please give the witness Exhibit 22, which purports to be a certificate of citizenship No. 6177029?

(Document handed to the witness.)

Q. (By Mr. Dooley): Mr. Leech, will you examine the photograph appearing on Exhibit 22 and tell the court whether you can identify the person appearing thereon? A. Yes, I can.

Q. And who is that person?

A. That is Freeda Diamond, the lady that I knew as David Diamond's wife.

Q. And how long have you known the defendant Freeda Diamond? [292]

(Testimony of John L. Leech.)

A. For approximately the same length of time but not as well as I knew David Diamond.

Q. Now, did you ever attend any meetings of the Communist Party at which the defendant David Diamond was present? A. Yes, sir.

Q. What meetings?

A. Quite a number of them, sir.

Q. Will you describe to the court a meeting or meetings that you attended with the defendant David Diamond?

A. I don't know that I can describe them in the chronological order that they came in, but I would say that I have attended a minimum of 20 meetings with David Diamond, which were fraction meetings of our international workers or group.

I recall that in 1932 in the Centinela Valley the Los Angeles section of the Communist Party held its section convention and Mr. Diamond and myself were both present at that convention.

I recall a number of meetings where Mr. Diamond was present where we conducted Communist Party business in connection with the newspaper "The Morning Freihite" (phonetic).

And between the years 1932 and 1936 my best estimate would be that I attended 10 or more unit meetings of the Communist Party where Mr. Diamond was present.

Q. Now, referring to the Centinela Valley convention [293] that you mentioned, where was that convention held?

A. I don't believe that I could give you the

(Testimony of John L. Leech.)

exact location any more, sir. Centinela Valley has grown tremendously since that time. It was pretty much open country. It was in a hall, I believe, in the area known as Lawndale at the present time. Might have been known as Lawndale then but we referred to it as the Centinela Valley convention.

Q. Now, at this convention were any means employed to restrict persons who attended the convention? A. Yes, sir.

Q. What means were employed?

Mr. Brock: I will object at this point. There is no question here—"restrict them" as to what? Maybe restricting in any number of ways. The question is certainly indefinite and vague.

The Court: Objection overruled.

Mr. Dooley: Will the reporter please read the question?

(Question read as follows: "Q. Now, at this convention were any means employed to restrict persons who attended the convention?")

The Witness: In the first place, except for ranking members of the Communist Party of the United States, the first requirement was an authorized credential by the section committee of the Communist Party. [294]

Mr. Brock: I will move to strike the answer on the ground that in the first place the question is indefinite and in the second place the answer so far purports to be founded upon either hearsay or conclusions. He is simply telling us nothing.

(Testimony of John L. Leech.)

The Court: I don't know whether it is hearsay or a conclusion, counsel.

Mr. Brock: The point I am getting at in the first place, the question said "restrict." I don't know what he means by "restrict." I guess he means restricting those who come in. If that is what Mr. Leech is testifying to that will clarify it, but the next point is when he says that credentials were required and so forth. I don't know by whom or anything else. It is obviously founded on some type of conclusion on his part unless he personally required the credentials and checked them.

The Court: What do you know about the credentials? Who issued them?

The Witness: At that time, your Honor, I only know that I was required to have one as a delegate. Subsequently—in subsequent conventions I did issue them to the delegates. It was a cut and dried procedure.

Mr. Brock: Now, may I make this point. Mr. Leech says "I was required to" which is a conclusion.

Now, if Mr. Leech says "I had a credential and presented [295] it to somebody," that I submit is factual.

The Court: Did you present a credential?

The Witness: Yes, sir.

Mr. Brock: That I take it is all Mr. Leech is telling us—all he is telling us is that he presented a credential.

The Court: Where did you get the credential?

(Testimony of John L. Leech.)

The Witness: I got the credential from the section organizer of the Communist Party at that time, a man known as Pop Hannoff.

Q. (By Mr. Dooley): And were there other means employed to restrict persons who attended this meeting?

Mr. Brock: To which I will object as calling for a conclusion and based upon hearsay.

Mr. Dooley: It does not call for a conclusion if the witness knows any means that were employed. It is asking him were any means employed.

Mr. Brock: This is not testimony that is being asked as to what he did and what he knows. I can say "means were employed" and that can mean any one of a million things.

Q. (By Mr. Dooley): I will add to the question, your Honor, if you know where there any other means employed to restrict those who attended this meeting?

Mr. Brock: I think the question still calls for a conclusion.

The Court: I am going to overrule the objection.

The Witness: Yes, sir.

Q. (By Mr. Dooley): What other means?

A. The convention—there was a steering committee of people whom I could name if you desire, who were stationed at the door and took up the credentials, registered them, searched the delegates to see that they did not have any names and addresses and incriminating material in their possession which might be incriminating if the place was

(Testimony of John L. Leech.)

raided by the police or by some of the authorities, and then they were admitted into the hall and were not allowed to leave until the end of the day's session.

The Court: You know that to be a fact, do you?

The Witness: Yes. I have organized those things many other times, your Honor, after that.

Q. (By Mr. Dooley): Now, at this meeting at Centinela Valley were any speeches made?

A. Yes, sir.

Q. Do you recall any of the speeches made?

A. In a general way.

Q. Will you tell the court concerning the speeches that you recall in a general way?

Mr. Brock: To which I will object on the ground that the question is vague and indefinite. "Tell the court concerning speeches that were made." It has no meaning to me.

The Court: Gentlemen, it seems to me whether there were [297] speeches made or whether there was coffee served it was a Communist meeting and only members of the Communist Party were admitted. That is the only thing that is material, is it not?

Mr. Brock: Then if this is not material the objection must be sustained.

Mr. Dooley: I wanted to establish that certain speeches were made at this convention because of the content of the speeches concerning certain matters concerning the advocacy and the aims and purposes of the Communist Party.

(Testimony of John L. Leech.)

The Court: Then why don't you ask him that question?

Q. (By Mr. Dooley): Were any speeches made at that convention concerning the advocacy of the overthrow of the United States Government?

Mr. Brock: To which I will object as being a leading question and on the further ground it is irrelevant—what speeches may have been made unless the Diamonds participated in the making of them.

The Court: If they were present, counsel, and it was a closed meeting.

Mr. Brock: The least that can be said for it is it is a leading question.

Mr. Dooley: Counsel, you objected to the previous question which was not leading on the ground that it was too indefinite. [298]

The Court: I will let you ask the first question. The objection is overruled.

Mr. Brock: Are we back on the first question again?

The Court: Yes.

Q. (By Mr. Dooley): Will you tell the court concerning the speeches that were made at this convention?

Mr. Brock: If the court please, this doesn't ask what the speeches were. I don't know what he wants from this witness when he talks about "concerning the speeches."

The Court: I don't either, counsel.

Mr. Brock: I think we have a right to know

(Testimony of John L. Leech.)

what the question means before the witness starts to answer it.

The Court: I don't think so. I think he has a right to ask the question.

The Witness: Well, first sir, there were a number of speeches. The convention itself was merely a series of speeches.

The one speech that I recall with some substance was the speech that was made by George Morris, who was the editor of the Communist paper The Western Worker at that time.

He came down to our convention, our Los Angeles convention representing the District Committee of the Communist Party and I do recall some parts of Mr. Morris' speech but not all.

Q. (By Mr. Dooley): Will you tell the [299] court the parts of Mr. Morris' speech that you do recall?

Mr. Brock: To which I will object on the ground that it is calling for hearsay and in no way binding on our clients.

The Court: Were either Mr. or Mrs. Diamond present?

The Witness: Mr. Diamond was, sir.

The Court: May I ask this question? How do you know that only members of the Communist Party were present?

The Witness: Well, first, sir, because of the fact——

The Court: Speak up so we can hear you.

The Witness: First, because of the fact that

(Testimony of John L. Leech.)

they had credentials and secondly because the leading members of the Communist Party of the Los Angeles area and representatives of both the State Committee and Central Committee were present. And, secondly, because of the steering committee or guard that was stationed at the door.

The Court: What was this guard stationed at the door for?

The Witness: They were stationed there to check the credentials of the individuals, to have them empty their pockets of papers and pencils and any incriminating identification and——

The Court: Well, how do you know that only members of the Communist Party were admitted to that meeting? Suppose somebody came there who wasn't a member of the Communist Party?

The Witness: I don't know, sir. At that time——

The Court: Then you don't know whether [300] Mr. Diamond was a member of the Communist Party or not, do you?

The Witness: Yes, but not because of that particular——

The Court: How do you know he was?

The Witness: Because I worked with him later, as I recall at this time, later, your Honor, in a number of meetings where the persons were directly under my control, one of which was Mr. Diamond and where we had pure and simple, cut and dried Communist business to transact and where we were intimately acquainted with each other.

The Court: You may proceed.

(Testimony of John L. Leech.)

Q. (By Mr. Dooley): The last question I believe was, will you tell the court the portions of the speech of George Morris that you recall?

Mr. Brock: It seems to me the court has clarified that situation. This witness doesn't know that Mr. Diamond was a member of the Communist Party unless I misunderstood the court.

Mr. Dooley: I think it is immaterial whether he was a Communist as to whether he heard this particular speech.

Mr. Brock: I would hate to be bound by every speech I ever heard. If he is not a Communist I don't see how this speech would be binding and the witness said he couldn't say that he was a member.

Mr. Dooley: He was present when security measures were taken. Now, whether the court will [301] ultimately reach the conclusion he is a member is immaterial as far as this evidence is concerned.

Mr. Brock: These self-same security measures were the ones which admitted Mr. Kimple and Mr. Kimple's wife also and a number of other people who were not Communist members.

Mr. Dooley: They were Communist Party members because they had a card and were in the party for years, although they were acting in a dual capacity.

The Court: This testimony is more or less cumulative of what we had yesterday, is it not?

Mr. Dooley: Not this particular portion, your Honor.

(Testimony of John L. Leech.)

I don't believe Mr. Kimple testified concerning this convention in Centinela Valley.

The Court: We are not going to go through every one of these meetings, are we?

Mr. Dooley: I would like to present——

The Court: The testimony was that they had regular meetings. Are we going to attend all the meetings?

Mr. Dooley: Well, I would like to produce as much evidence as possible in view of the rule of clear and convincing evidence. I would like to present as much evidence as is possible and available as I can.

Mr. Brock: It seems to me that the court has already indicated the position that membership alone is all that is required and we are just really going through some window [302] trimming in letting counsel put on his case here.

Mr. Dooley: The court hasn't indicated that at and the theory of the case as counsel argued in the trial memorandum is different from what he is stating now to the court.

Mr. Brock: Our theory is different markedly on a number of things.

Mr. Dooley: You have taken an inconsistent position, counsel.

Mr. Brock: I do that all the time but I think here the fact remains that the court clearly expressed the position that membership alone was all that was required.

The Court: I haven't expressed that opinion be-

(Testimony of John L. Leech.)

cause the Government has taken a different position and I am permitting them to offer their evidence even though I have my own personal view on it. I say "personal view." I wouldn't call it that but I thought in this day and age it is a matter of common knowledge that the Communist Party advocates the overthrow of this Government by force and violence, but the Government is not willing to go on that theory and I am permitting them to offer their proof.

Mr. Brock: I might merely point out to the court that there was a day and age when it was common knowledge that the sun revolved around the earth, too.

The Court: I know, and one time they thought it was flat.

Mr. Brock: That is true. I have made my objection. [303]

The Court: Overruled.

Q. (By Mr. Dooley): Will you proceed? Do you recall the question, Mr. Leech, the portions of the speech which you recall of Mr. George Morris?

A. Yes, sir. I recall that at the end of the convention when Mr. Morris was making a summary he dealt at some length upon the plan of work that we had adopted for, or were adopting for the coming period of time.

I remember that Mr. Morris in his concluding remarks, and this is about the only part of his speech that I remember clearly, was that he drew the parallel of two roads. He said that there was a high

(Testimony of John L. Leech.)

road, the high road to the land of Communism—the land of Marxism, Leninism and Stalinism and that there was a low road down to the swamps and the jungles of capitalistic oppression. And he called—he used the words "a morass" and he said it was up to us as the leaders of the working class to take our choice of which road that we were going to pursue.

He said the capitalists and the ruling class throughout the world were greedy and tenacious and that the Communist Party on the other hand was the vanguard and the leaders of the working class and that it would be inevitable that we would come into conflict with the opposing class of society and that being greedy and tenacious they would never give up graciously by legalistic means any of the things stolen from [304] the people and that we as Communists must organize our might in such a way we would have to completely and irrevocably destroy them.

I didn't want to say, sir, that all of that phraseology was the phraseology of Mr. Morris, but that it, I think, an accurate gist of what he said.

Q. (By Mr. Dooley): Now, you mentioned, Mr. Leech, approximately 20 fraction meetings that you attended of the I.W.O. with Mr. David Diamond. Will you explain to the court the meaning of "fraction meetings"?

A. Yes, sir. In Communist terminology it meant that portion of the membership of an organization which were the organized Communists.

(Testimony of John L. Leech.)

Q. Now, with respect to these fraction meetings were any means employed to restrict persons who attended these meetings? A. Yes, sir.

Q. What means were employed?

A. First the meeting was decided upon in consultation with the leadership of the Communist Party. Secondly, the fraction secretary was the only person that knew in advance of the time where a meeting was to be held and the third thing was that during that period of time, because of police terror, alleged red squad terror in Los Angeles our Communist Party was functioning on a squad captain basis where a member [305] was assigned by the fraction section to pick up these people and bring them to a designated meeting.

The Court: Did you ever at any of these meetings pick up Mrs. Diamond?

The Witness: No, sir.

The Court: Only Mr. Diamond?

The Witness: No, sir.

The Court: Never picked up Mr. Diamond?

The Witness: Neither one of them.

The Court: Were you ever at one of these meetings where Mr. or Mrs. Diamond were present?

The Witness: Of one type of meeting, your Honor.

The Court: What type?

The Witness: Unit meetings in the Boyle Heights region.

Q. (By Mr. Dooley): Now, going back to the

(Testimony of John L. Leech.)

fraction meeting. Do you recall the places at which any of these meetings were held?

A. Yes, sir.

Q. What were the places?

A. The largest number of them were held on the corner of Third and Spring Street here in Los Angeles, on the second floor of the Stimpson Building, which at that time was the headquarters for the Southern California Council of the International Workers Order.

Some of them—excuse me, sir. Some of them were held [306] at 230 South Spring Street in the offices of our workers' school in what was known as the Los Angeles Cultural Center.

Q. Now, you mentioned the means employed to restrict persons who attended these meetings. To what persons were those means directed?

A. To restrict persons of what category?

Mr. Gostin: Your Honor, I interpose an objection. I think it is ambiguous, vague and uncertain and I can't understand the tenor of the question.

The Court: I don't think it is ambiguous.

Mr. Gostin: To what persons were the means directed? That is how I understood the question.

Mr. Dooley: The means of restriction.

The Court: He is asking the witness the type of meetings that the membership was restricted to —what type of people were admitted into the meetings.

Mr. Gostin: That is not quite my understanding.

(Testimony of John L. Leech.)

The Court: Maybe you had better ask the question over again.

Q. (By Mr. Dooley): What type of people were admitted at the meetings, Mr. Leech?

A. In fraction meetings, Mr. Dooley?

Q. People who were admitted to the meetings, what type of people?

A. People who were assigned—Communists who were [307] assigned to the International Workers Order.

Q. Now you mentioned, Mr. Leech——

The Court: Let me ask a question. Did you ever attend what you considered or called a "closed meeting" in which Mr. and Mrs. Diamond were present?

The Witness: Yes, sir.

Q. (By Mr. Dooley): And where did you attend a closed meeting at which Mr. and Mrs. Diamond were present?

A. Those, Mr. Dooley, were where both were present at unit meetings of the Boyle Heights subsection of the Communist Party.

Q. And do you know where they were held?

A. I am trying to answer his Honor's question. I don't want to misunderstand. I am referring now to where they were jointly present.

The Court: I don't care whether they were there together or whether either one of them were there.

The Witness: Yes, in numerous cases where one or the other was there and in the lesser number of cases where they were both present.

(Testimony of John L. Leech.)

The Court: What steps were taken so you might know that the people present, the persons present were members of the Communist Party?

The Witness: In most cases, your Honor, though not in every instance, in most cases these meetings were called at [308] my instigation to implement our work in the International Workers Order.

The Court: You talk about "International Workers Order." What does that have to do with the Communist Party?

The Witness: That was the financial and insurance branch of the Communist Party.

The International Workers Order during the period of time of which I had knowledge, raised and turned over to the Communist Party because of its mass character, approximately 75 per cent of the funds which were used to carry out Communist activities.

Mr. Brock: At this point I move to strike the witness's answer on the ground that it is clearly a conclusion and is not supported by any factual data. If there is such factual data I think it should be produced, if it is relevant at all.

The Court: Do you know those things to be a fact?

The Witness: Pretty much, sir.

The Court: What do you mean by "pretty much"?

The Witness: I would not, your Honor, pretend to try to be a real authority on the national

(Testimony of John L. Leech.)

scale, but on the local scale years ago a few congressional committees and the courts——

The Court: I mean of your own knowledge.

The Witness: Of my own knowledge, yes, sir.

The Court: How do you know that money was turned over to the Communist Party?

The Witness: Because I have received it, banked it, expended it for other Communist reasons and have since that time made many of those records available to various agencies of the Government.

The Court: Counsel, the only thing I am trying to do is get some information. They were talking not about the Communist Party, but they were talking about something else and I wanted to find out what it represented.

Mr. Brock: I don't object to the information coming in, but I think it should come in on a factual basis if it is relevant at all.

He has gotten into something here where, quite clearly in large part, his answers are extremely prejudicial in the case, and as I see it it has no particular bearing on the case.

He has gotten into something where, by his own testimony, his belief was predicated upon court records and congressional investigations.

The Court: I called him on that.

Mr. Brock: I know you did and he said yes, he knows it to be a fact but his saying he knows it to be a fact doesn't alter it from a conclusion of a fact.

The Court: But he said he turned this money over to [310] others.

(Testimony of John L. Leech.)

Mr. Brock: What he is trying to tell you, your Honor, is that there was an embezzlement going on and——

Mr. Dooley: I object to that remark.

Mr. Brock: It is clear, there is no question about it. I am addressing myself to the court, Mr. Dooley, and I would like to be permitted to finish.

He is in effect telling your Honor at this point that there was an embezzlement of the insurance premiums in the Industrial Workers Order.

The Court: We are not trying the Industrial Workers Order.

Mr. Brock: I know it and I am not trying to, but your Honor asked for the answer and the witness gave it.

The Court: I simply wanted to clarify it in my own mind. I want to say to you gentlemen that you probably know, from what you said yesterday, that you knew one of the witnesses, you apparently have had experience in these cases before.

Mr. Brock: Yes.

The Court: I haven't had so I am trying to get some information. I am trying to learn something.

Mr. Brock: Unfortunately the bulk of attorneys in town don't handle these cases. I haven't met Mr. Leech before that I remember, but I met Mr. Kimple two or three times, but the fact remains that what the witness has tried to convey [311] to the court is an impression that the I.W.O.—International or Industrial——

The Witness: International Workers Order.

(Testimony of John L. Leech.)

Mr. Brock: Which as I understand was an insurance organization; that this was just another bunch of Communists meeting together in an organization.

Mr. Dooley: I believe I can ask the witness to clarify that.

The Court: Just a moment, counsel. I am not really interested in that angle of it and Mr. Dooley could shorten his examination as far as I am concerned very materially by asking this witness if the defendants in this case or either of them ever attended closed meetings.

Now, I think that is the only thing that this witness can testify to that is of any real materiality to this case. I think you could shorten the case by doing that instead of going through all of this rigamarole that you are going through and covering so much territory.

As I understand the issues in this case are whether or not these people were Communists and you have offered evidence here of their Communist records and that they attended Communist meetings.

Now, the only other point that you are attempting to prove is that the Communist Party at that time advocated the overthrow of the Government of the United States by [312] force and violence.

Mr. Dooley: Yes, that is correct.

The Court: Then why all these declarations?

Mr. Dooley: I also allege—I would like to get in

(Testimony of John L. Leech.)

as much as I can—I would like to get in as many grounds as alleged in the complaint as possible.

The Court: The question I asked the witness doesn't prove or disprove anything. I was simply asking for my own information.

Mr. Dooley: Yes, your Honor. Now, the complaint alleged concealment as to membership in an organization and the examiners have testified that they asked them concerning the organization, so I believe that we have proved they were members and that would be sufficient. But on the other hand the complaint also alleges that at the time they took the oath of allegiance they did not intend to support the Constitution which is an additional ground. I mean this evidence is not being offered to say that enough hasn't been presented, but as an additional ground that the false oaths of allegiance would necessitate a knowledge of the aims and objectives——

The Court: And the questions you are asking are not tending to prove either one of those questions.

Mr. Gostin: I might also point out that I believe the point Mr. Dooley just raised is in the second cause of action which has been dismissed. [313]

Mr. Dooley: Now, that is the first cause of action. The first cause of action is based on the concealment on several grounds, first, the use of a name, next the membership in the organization and thirdly as to intentions.

Mr. Gostin: You are correct.

Mr. Dooley: So the Government is not only rest-

(Testimony of John L. Leech.)

ing content by trying to prove one but is trying to prove all of them.

The Court: I don't think we should take the time to cover that, counsel, unless it becomes an issue in the case eventually.

I don't know what the defense is going to be in this case or what witnesses they are going to have.

Mr. Dooley: In view of the rule of the Supreme Court as to clear and convincing evidence the Government would like to put every meeting that they attended into the record that we can bring before the court.

The Court: Just a moment. I started all this argument by asking the question for my own information. Let us forget it and go ahead.

Mr. Dooley: All right, your Honor. Thank you.

Q. (By Mr. Dooley): Now, Mr. Leech, did you come in contact with the defendant David Diamond in connection with any other activities of the Communist Party? A. Yes, sir. [314]

Q. What other activities?

A. I recall that I came in quite frequent contact with Mr. Diamond.

The Court: We are talking about Mrs. Diamond, aren't we?

Mr. Dooley: No, Mr. Diamond.

The Court: I thought you said Mrs. Diamond.

Mr. Dooley: Now, I intended to say the defendant David Diamond.

The Witness: David Diamond, I recall specifically two other activities where I came in contact

(Testimony of John L. Leech.)

quite frequently with him. One of them was in connection with the management of the Jewish newspaper, The Morning Freihite and the other one was in pretty frequent attendance of unit meetings of the Boyle Heights subsection of the Communist Party.

The Court: I would like to ask this question. How do you know he was a member of the Communist Party?

The Witness: From 1935—1934, your Honor, through 1936 I had the responsibility of controlling at various times his membership cards. All of the documents of the Communist Party were in my physical possession during that period of time—not necessarily in my physical possession, but at my demand at any time by order to the membership director of the Communist Party and by his complete willingness to accept discipline and instructions from myself, who was the [315] head of the Communist Party at that time.

Mr. Brock: May I move to strike everything starting with the word "willingness" on the ground the witness again is giving us a conclusion.

The Court: Did he comply with your request?

The Witness: He did.

Mr. Brock: That it is vague and indefinite and a conclusion on the part of the witness.

The Court: Objection overruled.

Let us get down to Mrs. Diamond.

Q. (By Mr. Dooley): Now, did you attend any meetings, Communist meetings of the Communist

(Testimony of John L. Leech.)

Party at which the defendant Freeda Diamond was present? A. Yes, sir.

Q. And what meetings?

A. About 10 or 12 of them, sir. Some of them I can name—I can name a number of residences if you want me to in the Boyle Heights area where these meetings were held. They were not held, for security reasons, at the same place permanently but were staggered throughout the neighborhood and in addition to that no less than eight or 10 meetings in the offices of the Communist headquarters at 224 South Spring Street where she was a part of our women's organization of the Communist Party to carry on work among the women.

Q. Do you know who called these meetings at Communist [316] Party headquarters?

A. I did, sir.

Q. And what persons were permitted—were the meetings that you called open to the general public?

A. No, sir.

Q. And what persons were permitted to attend the meetings that you called?

A. Do you want me to name the individuals or some of the individuals?

Q. No, the class.

A. This was the women's commission of the Communist Party—the local application—women's commission. There exists a national commission of the women's commission of the Communist Party and this was the local application and she was part of this commission to carry on Communist activi-

(Testimony of John L. Leech.)

ties among the women and children in the Los Angeles section.

The Court: Who commissioned her?

The Witness: I did. And previously—I did not originally, sir, she was a member of the commission when I first became acquainted with her.

The Court: And then you continued her in that position?

The Witness: Yes, sir.

The Court: How would you commission them?

The Witness: Either by sending word to the unit organizer of the Communist Party in which they were a member, [317] summoning them in then, what was then the Communist Party headquarters at 224 South Spring Street, talking to them or sometimes in the course of Communist activities drive out either to the unit organizer's house or possibly to her house, although I do not recall that I did in Mrs. Diamond's case.

The Court: How would you know when you had your class that all parties present — I think you said at 224 South Spring Street?

The Witness: Yes, sir.

The Court: How would you know that all parties there were members of the Communist Party? What steps did you take to assure that there were no outsiders there?

The Witness: Well, in this case, your Honor, at this level these people were involved in this work were the most developed, the best developed and most trustworthy members of the party that we had.

(Testimony of John L. Leech.)

They were selected precisely because of their knowledge of the party and their ability to give leadership. That was No. 1.

And then by constant association with the people that were over them in command and my own association with them.

Mr. Gostin: I move to strike the answer of the witness as a conclusion and hearsay.

The Court: The motion is denied.

Q. (By Mr. Dooley): Now, during your membership in the Communist Party, Mr. Leech, did you ever know the defendant [318] David Diamond by any other name? A. Yes, sir.

Q. And by what other name?

A. Either Thornson or Thorenson — Comrade Thornson I believe it was, sir.

The Court: How would you address the women?

The Witness: Usually — in some cases — well, usually, sir, "Comrade Freeda, Comrade Ethel and Comrade Eva."

The Court: Did you ever address Mrs. Diamond that way?

The Witness: As "Comrade Freeda" many times, sir.

Mr. Dooley: Will the clerk give the witness Exhibit 8 for identification?

(Document handed to the witness.)

Q. (By Mr. Dooley): Mr. Leech, will you examine Exhibit 8 for identification and tell the court whether you can identify that document as relating to the Communist Party of the United States?

(Testimony of John L. Leech.)

A. Yes, sir. I recognize this as one we called our party dues book and the only difference that I note in this book is that of the color. I remember these books—in other words, sir, I remember them as having been brown, blue, green and black. The book was not always for every year of the same color.

Q. Now, I ask you to look on the first page of this book and the name "Sam Darcey" (phonetic). Do you know who [319] Sam Darcey was?

A. Yes, sir.

Q. And who was Sam Darcey on April 19, 1932?

A. Sam Darcey was the district organizer of District 13 of the Communist Party which consisted of the district — consisted of the States of Arizona, Nevada and California.

Q. Now, Mr. Leech, did you as a Communist Party member—did the Communist Party of Los Angeles use registration cards for its members?

A. Yes, sir, for a period known as the "control period."

Mr. Dooley: Will the clerk give the witness Exhibit 9 for identification?

(Document handed to the witness.)

Q. (By Mr. Dooley): Will you please examine Exhibit 9 for identification and tell the court whether you can identify that exhibit as relating to the Communist Party of the United States in Los Angeles County?

A. Yes, sir. However, I do not specifically remember this card if that is what you are asking me.

(Testimony of John L. Leech.)

Q. Now, the type of card. Do you remember that?

A. Yes, sir. Starting in 1933 as a means of control the Communist Party yearly registered its members and as a receipt for the registration the party member was given a card similar to this. Starting in 1934 they were registered [320] twice a year. At that time the books of the—the dues books of the member was examined to see whether he had purchased all of his dues stamps, to see whether the book was in good order and merely to see if new information could be obtained on the person as a result of this registration.

Q. Mr. Leech, did you know the defendant David Diamond or both of the defendants to operate a store in or around Los Angeles?

Mr. Gostin: Object. That is completely irrelevant and immaterial.

Mr. Dooley: It will tie it up later.

The Court: I assume it is preliminary.

The Witness: Yes, sir.

Q. (By Mr. Dooley): And do you know of any activities relating to the Communist Party in connection with this store? A. Yes, sir.

Q. What activities?

Mr. Brock: To which I will object. The question doesn't purport to on its face have any connection with the complaints except the activities related to the store. I have no way of telling what the witness is going to come out with or what the question means.

(Testimony of John L. Leech.)

The Court: I thought the question was clear enough, counsel.

Mr. Brock: The question is does he know of any activities. [321]

The Court: Read the question.

(Question and answer read.)

Mr. Brock: It seems to me the question is clearly, if I may use the contradictory expression, is clearly vague.

The Court: Well, I think it is more or less a preliminary question as to what activities they conducted there.

Mr. Brock: That isn't what he asked.

The Court: But he has asked a preliminary question.

Mr. Brock: Of course on that supposition any kind of question could be labeled "preliminary" and then get in prejudicial testimony. He is not asking what the Diamonds did in connection with the store at all. If he is leading up to it I don't see any point in leading up to it—we don't even know that the witness knows.

The Court: Do you know what the Diamonds were doing in this store?

The Witness: Yes, sir, they were operating this little store.

Q. (By Mr. Dooley): Do you know of any activities of the Communist Party in connection with the store which the Diamonds operated?

Mr. Brock: Same objection.

The Court: Same ruling.

(Testimony of John L. Leech.)

Mr. Brock: I didn't understand your Honor had ruled on it. [322]

The Court: Well, I am going to. These objections are just delaying getting down to the point.

Q. (By Mr. Dooley): What activities?

A. I don't know whether it would be rightfully an activity or not, Mr. Dooley.

The Court: If you don't know their activities then you don't know, do you?

Q. (By Mr. Dooley): Do you know of any work or business of the Community Party that was conducted that had a relationship to the store which the Diamonds operated?

The Court: Now, let us get at it this way to stop these objections over here. Do you know whether or not outside of attending the meetings whether Mr. and Mrs. Diamond or either of them ever did anything in the way of furthering the activities of the Communist Party in this community?

The Witness: Yes, sir.

Mr. Brock: To which I will object as calling for a conclusion and object to the use of the term "furthering."

Mr. Gostin: Same objection, your Honor.

The Court: Objection overruled. What activities were they?

The Witness: I used to go to this little store on First Street at least once a month to gather money. The store was used as a drop for Communist Party money and Mr. and Mrs. Diamond both, along with other people out there, [323] would gather money

(Testimony of John L. Leech.)

from our sympathizers and supporters in the locality and accumulate it at the store and I would go out there and pick it up for our payroll and our Communist activities.

The Court: In other words, do I understand your testimony to be that they did give you money for the purpose of furthering the activities of the Communist Party which was used for furthering the activities of the Communist Party, which was used for furthering the activities of the Communist Party.

The Witness: Yes, sir.

Mr. Brock: May it be understood we have the same objection as calling for a conclusion?

The Court: Same ruling.

Q. (By Mr. Dooley): Now, Mr. Leech, while a member of the Communist Party did you ever attend any schools or classes conducted by the Communist Party? A. Yes, sir.

Q. What schools or classes did you attend?

The Court: Gentlemen, it is 12:00 o'clock and I believe in eating regularly.

Mr. Brock: We wouldn't want to interfere with that. We like to eat regularly ourselves.

The Court: We will take a recess until 2:00 o'clock. How much longer are you going to be on direct examination of [324] this witness?

Mr. Dooley: I believe I can finish in a half hour, your Honor.

The Court: Why a half hour?

Mr. Dooley: Well, yesterday we had Mr. Kimple

(Testimony of John L. Leech.)

on the stand who testified as an expert and opposing counsel seemed to complain concerning his qualifications, so I wanted Mr. Leech to also testify as an expert concerning the aims and objectives of the Communist Party and the circulation and distribution of documents.

I don't want to leave any question as to the testimony in that regard.

The Court: Of course, I haven't read any of these documents. I don't know what they contain. Wouldn't the documents speak for themselves?

Mr. Dooley: All I am going to do as far as I am concerned now—opposing counsel may question Mr. Leech concerning the contents of the documents, but all I am going to do is get his testimony as to their circulation and distribution.

The Court: May I ask a leading question?

Mr. Brock: Certainly. I will try not to object to this one.

The Court: Do these documents themselves teach the purposes of the Communist Party? Did they during this period?

Mr. Brock: You may respond first. [325]

Mr. Dooley: As far as my position is concerned, yes.

Mr. Brock: Let me make our position real clear. We have tried to do it right along.

The documents speak for themselves. In a certain sense they speak many things. They are not a con

(Testimony of John L. Leech.)

sistent pattern and that is true throughout. It is just like any——

The Court: What I am getting at is this, counsel. If there are books here the Government is attempting to prove the object and purpose of the Communist Party. Now, if those books teach those things why do we have to ask this witness about them?

Mr. Brock: I agree. I don't think the witness is an expert. I think very few people are experts.

Mr. Dooley: Well, I think this witness will say —the standard of an expert—a person is an expert by reason of his training and leadership in the Communist Party. He was the head of it here, but we will go into that later as far as his qualifications are concerned.

Mr. Gostin: We agree with your Honor's position. As counsel stated we certainly are not going to get up here and state that the Communist Party does not advocate the reading and use of Marx's and Lenin's works. There may be some dispute as to one or two particular items but as a whole most of the items mentioned here, yes, we have no objection to and we feel they do speak for themselves as counsel says. However, [326] many interpretations can be drawn. They have to be read in certain context and the time and place in mind, but we would certainly have no objection to those things going into the record. And as we mentioned yesterday we don't feel because of that—this has to be taken into consideration regarding time and understanding of

(Testimony of John L. Leech.)

the person reading it. That wouldn't be a subject of expert testimony and it is not needed and it wouldn't be helpful to the court.

The Court: The only thing is a person who is active in an organization could testify as to its objectives and purposes as far as this area was concerned.

Mr. Gostin: The most he could testify to, your Honor, is what he understood it to be. Another man might testify to something entirely different because that would be his understanding. This is something that depends upon your own understanding of what you read and really the most he could testify to is how he understood the books. Your Honor may come up with an entirely different understanding after reading the books.

The Court: The only thing is, I am trying to cut some corners here, counsel.

Mr. Dooley: Yes, but I don't think we will have too much more. I would like to get his testimony in because of—one of the reasons primarily is because yesterday opposing counsel questioned seriously the qualifications of Mr. Kimple [327] and examined him concerning that.

The Court: Any expert, medical or otherwise, is always questioned as to his qualifications. That is the usual practice, counsel.

We will recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:05 p.m. a recess was had until 2:00 o'clock p.m. of the same day.) [328]

Thursday, March 1, 1956, 2:00 p.m.

The Court: You may proceed.

JOHN L. LEECH

called as a witness by the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Dooley): Mr. Leech, while a member of the Communist Party did you ever attend any schools or classes conducted by the Communist Party? A. Yes, sir.

Q. What schools or classes did you attend?

A. Well, I attended training schools in the units.

I attended a school on a sectionwide basis known at that time as the Hollywood Workers' School.

I subsequently attended several sections of a school in San Francisco and here in Los Angeles known as—respectively as the Los Angeles Workers School and the San Francisco Workers School.

In the winter of 1934-1935 I was sent back to the National Training School of the Communist Party in New York City.

The Court: Who sent you back?

The Witness: The Los Angeles section committee of the [329] Communist Party.

And then in 19—the late part of 1935 and some of 1936 I attended a functionary school that was organized here in Los Angeles by the Central Committee for advance training.

Q. And while a member of the Communist

(Testimony of John L. Leech.)

Party did you read literature circulated by the Communist Party? A. Yes, sir.

Q. And did you study the literature circulated by the Communist Party?

A. I believe so.

Q. And while a member of the Communist Party did you have occasion to confer with other leaders of the Communist Party? A. Yes.

Q. And did you discuss with those leaders the aims and objectives and characteristics of the Communist Party? A. Yes, sir.

Q. And in the schools and classes which you have described were you taught the aims and objectives and characteristics of the Communist Party? A. I think so.

Q. Based upon your experience in the Communist Party, your training and your conferences with other leaders of the Communist Party what are the aims and objectives and characteristics of the Communist Party? [330]

Mr. Gostin: To which we object as calling for a conclusion of the witness. It would be hearsay as far as these defendants are concerned. It would be incompetent, irrelevant and immaterial as far as the defendants are concerned and no proper foundation has been laid.

The Court: Objection overruled.

Mr. Gostin: May I take the witness on voir dire, your Honor?

The Court: No, you will have a chance on cross examination.

(Testimony of John L. Leech.)

The Witness: The aims and objectives of the Communist Party as they were taught to me during my membership in the Communist Party, were that society was in a constant struggle; that society was divided into two classes, the oppressor and the oppressed.

That the Communist Party as the vanguard of the working class had the duty and the responsibility of leading the oppressed masses of the people in a physical struggle against their oppressors.

We were taught that the capitalist class, the ruling class had the Army and the Navy and all means of communication at their command and that they would not relinquish these and that the working class under the leadership of the Communist Party must overthrow and establish a workers' and farmers' government in its place. [331]

Q. (By Mr. Dooley): And were you taught the relationship between the Communist Party in the United States and the relationship between the Communist Party elsewhere, if any?

Mr. Brock: Same objection Mr. Gostin made and based upon the same grounds.

The Court: Objection *overruled. We* were taught that the Communist Party was only one of a brotherhood of Communist parties throughout the world, bound together by the Communist Internationale.

Q. (By Mr. Dooley): While a member of the Communist Party did you learn how—was literature circulated by the Communist Party during your membership? A. Yes, sir.

(Testimony of John L. Leech.)

Q. Do you know the manner in which it was circulated? A. Yes.

Q. In what manner was it circulated?

A. Basic circulation was by the party membership in the unit of the party which was the basic party organization, by distribution and sale of literature in the factories and in the homes in the neighborhood.

Here in Los Angeles we maintained a section or county literature apparatus where we bought literature on a wholesale basis and in turn resold it to the units of the party and to the mass organizations over which the party had control. [332]

Q. And do you have any personal knowledge as to the amount of literature that was circulated during your period as county executive secretary?

A. For the years of 1934, '35 and the major portion of 1936 I did have.

Q. And what knowledge do you have?

A. That we bought at wholesale as a section of the Communist Party, approximately $50,000 worth a year of the various books, pamphlets and magazines printed by the Communist Party and its subsidiary organization, and that in addition to that we raised money, sold and distributed literally thousands of copies. I wouldn't try to estimate the monetary value of the Daily Worker and The Western Worker, which was the official organ of the Communist Party here on the West Coast.

Mr. Dooley: Will the clerk give the witness Ex-

(Testimony of John L. Leech.)

hibit 31—I will start with—no, no, I will start with Exhibits 34 and 35.

The Clerk: Exhibits 34 and 35.

Mr. Dooley: 36.

The Clerk: 36.

Mr. Dooley: 38?

The Clerk: 38.

Mr. Dooley: 39.

The Clerk: Just a minute. [333]

Mr. Dooley: I am sorry.

The Clerk: 38.

Mr. Dooley: 39.

The Clerk: 39.

Mr. Dooley: 40.

The Clerk: 40.

Mr. Dooley: 43.

The Clerk: 43.

Mr. Dooley: And 44.

The Clerk: 44.

(Documents handed to the witness.)

Q. (By Mr. Dooley): Mr. Leech, will you examine Exhibit 34 for identification and tell the court whether that exhibit or copies thereof were circulated by the Communist Party in Los Angeles County during the period of your membership therein?

A. Yes, the program of the Communist Internationale.

Q. Did you read that exhibit while you were a member of the Community Party? A. Yes, sir.

Q. Will you examine Exhibit 35 and answer the

(Testimony of John L. Leech.)

same question? Well, I asked two questions there. Will you tell the court whether that exhibit or copies thereof were circulated by the Communist Party during the period of your membership therein? [334]

A. Yes, they were. This is the Communist Party pamphlet—"Communist Party in Action." That was written by one of the chief theoreticians during that period, Alex Bittelman and I am very familiar with it.

Mr. Gostin: Object to the interpretation and designation of the pamphlet as not responsive and calling for a conclusion of the witness.

The Court: Doesn't it show the name of the author?

Mr. Gostin: The name of the author is all it states. I object to the designation. I think the witness used the words "chief theoretician." I object to that as not responsive and a conclusion.

The Court: Do you know that to be a fact?

The Witness: Yes, sir.

The Court: Objection overruled.

Q. (By Mr. Dooley): Did you read Exhibit 35 while you were a member of the Communist Party?

A. Yes, sir.

Q. Will you examine Exhibit 36 and tell the court whether that document or copies thereof were circulated by the Communist Party during the period of your membership therein?

A. Yes, they were.

Q. And did you read that exhibit?

(Testimony of John L. Leech.)

A. I did, sir. This is the Communist Bible or was [335] so referred to in those days the "Communist Manifesto."

Q. Will you examine Exhibit 38 and tell the court whether that exhibit or copies thereof were circulated by the Communist Party during the period of your membership therein?

A. Yes, it was.

Q. And did you read that exhibit during the course of your membership? A. I did.

Q. Will you examine Exhibit 39 and tell the court whether that exhibit or copies thereof were circulated by the Communist Party during the period of your membership therein?

A. Yes. I have read—I have examined it and I have read studies—I have studied this document thoroughly.

Q. Will you examine Exhibit 40 and tell the court whether that exhibit or copies thereof were circulated by the Communist Party during the period of your membership therein?

A. Exhibit 40 is the "The Communist Party, a Manual on Organization." I have examined this now and I am familiar with the book.

Q. And was it circulated by the Communist Party during the period of your membership?

A. It was widely circulated until sometime in 1935 when, because of the bluntness of its language and the [336] revolutionary outline of the book itself, the party attempted to withdraw it from the public. They were never 100 per cent successful in

(Testimony of John L. Leech.)

withdrawing it because of the very wide distribution that it had received.

Mr. Gostin: I move to strike everything after the words "It was withdrawn sometime in 1935" on the grounds it is not responsive.

The Court: That motion will be granted.

Q. (By Mr. Dooley): I ask you to examine Exhibit 43 for identification and tell the court whether that exhibit or copies thereof were circulated in Los Angeles County during the period of your membership therein?

A. Yes, sir, it was, both in this form and in the printed volumes distributed by the Communist Party known as "The Selected Works of Lenin."

Q. I will ask you to examine Exhibit 44 and tell the court whether that document was circulated by the Communist Party during the period of your membership therein?

A. Yes, sir, it was. This is part of the Little Lenin Library and is simply a volume of a large number of books that made up this library commonly called within the Communist Party "The Little Lenin Library."

Mr. Dooley: No further questions, your Honor.

The Court: Cross examination. Counsel, may I make this suggestion? I feel that this witness' testimony is [337] only material on two points, at least two points and they are whether or not the defendants in this case were members of the Communist Party and, secondly, I think whether he has any knowledge, he hasn't been asked, but has he any

(Testimony of John L. Leech.)

knowledge that the defendants had any information concerning these books.

Mr. Brock: Then if your Honor will strike the balance of the testimony——

The Court: I will not strike the balance of the testimony but it seems to me there are only two points involved. Well, there may be more than two. I might state it this way: first, were the defendants or either of them members of the Communist Party? Did the Communist Party advocate the overthrow of this government by force and violence? That really are the two outstanding points that we are really interested in in this case, isn't it?

Mr. Brock: I think it boils down, without waiving a few points we think important, but they are the two major points.

I take it from your Honor's comments that there is not much necessity for cross examination.

The Court: I am not going to restrict cross examination. I am simply making that suggestion, counsel.

Mr. Brock: I did not mean to imply that your Honor intended to restrict cross examination, but the point is that— [338] the real kernel of the case is in this question of force and violence and the advocacy of those two things. Necessarily cross examination would be somewhat lengthy and I would like with the court's permission, to ask one or two preliminary questions and then make a motion to defer this witness until we have a chance to prepare for cross examination.

(Testimony of John L. Leech.)

If I may ask two or three preliminary questions and then make the motion I think I can make my reason for it clear.

The Court: I might state, counsel, that counsel have objected to the fact that the names of this witness and the other witness—and I don't know if there are any more or not, haven't been furnished to the defendants.

This court is not going to decide this case at this time. I am going to give counsel an opportunity to further examine the witnesses if they so desire.

I felt when I did not require the Government to furnish the names of this type of witness that for the protection of the witness the names should not be made known.

Mr. Brock: We tried to make clear at the time that the witnesses, so far as we knew, were not witnesses of top secret but were witnesses that the Government has been using right along.

The Court: For instance, the gentleman we had on yesterday afternoon, you should have probably known from his testimony in other cases what he would testify here. You [339] indicated that you have cross examined him before and that you knew pretty well what his story was going to be.

Mr. Brock: That is true, if the court please, with reference to Mr. Kimple but I might make this point. I do a great deal of litigation apart from this type of litigation, fortunately. Sometimes I represent clients that have money and I can't keep in mind all the time the testimony of Mr. Kimple

(Testimony of John L. Leech.)

or others. If I know I am getting them then I can go to my material and try to prepare for cross examination.

The Court: I am going to have a further hearing of this case and if any of these witnesses that haven't been revealed to you, counsel, you will have an opportunity to further cross examine them. I am going to give you that opportunity.

Mr. Brock: I can tell your Honor that in this instance that will be true because there have been a number of cases in which Mr. *Lynch* has testified and in which I shall try to obtain transcripts.

I can't tell you now how extensive the cross examination will be. I had in mind that perhaps the court would prefer, inasmuch as this would clearly be necessary, that rather than divide the cross examination we arrange for me to get the material which I think I will need and which I think the court will help us obtain and then set a time for cross examination rather than to divide it in parts.

I am willing to do whichever way the court feels is [340] more convenient.

Mr. Dooley: I will object to that, your Honor, because we have no showing here that there has been any testimony in any other case relating to the Diamonds.

Mr. Brock: I am talking about the aims and objectives of the Communist Party which Mr. Leech has testified to on many occasions, starting as I understand it, in 1940.

Mr. Dooley: Which would lead to innumerable

(Testimony of John L. Leech.)

collateral matters if that is the purpose of the continuance.

The Court: He is not going into collateral matters. I don't know whether this witness ever testified before in a case or not.

Mr. Brock: That is why I suggested a couple of preliminary questions, so you could ascertain that as a matter of fact. And I assume Mr. Dooley knows it and others.

The Court: You may proceed. I was in hopes of getting further along with this case, and I had in mind, inasmuch as we are going to have to wait for the Supreme Court decision, that I would have a further hearing for further cross examination.

Mr. Brock: We appreciate the court's fairness in this regard and we do think it will be necessary that we are willing to adjust ourselves to whatever most suits the court and which is compatible with the interests of our clients in getting this information to cross examine on. [341]

If I may I will ask Mr. Leach a few preliminary questions.

Cross Examination

Q. (By Mr. Brock): When was the first time you testified under oath in any type of a proceeding respecting your activities in the Communist Party?

A. The beginning was on or about the 9th of July, 1939.

Q. And was that before an Un-American Activities Committee? A. No.

Q. Where was that, Mr. Leech?

(Testimony of John L. Leech.)

A. That was in the Harry Bridges deportation hearing on Angel Island in San Francisco.

Q. And that was the case heard before Dean Landis? A. That is the one.

Q. In which Dean Landis characterized your testimony as lies?

Mr. Dooley: I object on the ground——

The Court: I think that is improper.

Mr. Dooley: Improper and improper impeachment because if he——

The Court: I don't care about what Judge Landis said.

Mr. Brock: I will withdraw it. I am merely laying a foundation. [342]

Q. (By Mr. Brock): You did testify before an Un-American Activities Committee sometime around 1940? A. Yes.

Q. And from then on and up to the present time you have from time to time testified in a number of deportation proceedings, have you not?

A. Yes, I have.

Q. Now, one of those was in the case of Harry Carlisle? A. Yes.

Q. And one was in the case of a person by the name of Nestor? A. Yes, sir.

Q. Can you tell us of other proceedings in which you have testified?

A. Oh, testified before a judge of the New York Supreme Court in a proceeding against The International Workers Order.

I have appeared in a deportation action——

(Testimony of John L. Leech.)

Q. Excuse me for interrupting, Mr. Leech, but that International Workers Order testimony, will you place a date for each of these, please, approximately? A. That I think was in 1950.

Q. All right. And the next occasion that you are telling about.

A. Well, there was Alice Oransk case. That was a [343] case tried here in Los Angeles by the Immigration Service. I think that was in 1950 at about the same time as the Harry Bridges case.

Q. That was a deportation proceeding?

A. Yes. There was a deportation proceeding against Margaret Stevenson at approximately the same time here in Los Angeles at which I appeared as a witness.

I appeared in New York City for the Immigration Service in a deportation action known as the "Demitri Shawn case" (phonetic).

Q. You had better spell that. A. I couldn't.

Q. D-e-m—something or other? A. Yes.

Q. Go ahead.

A. I appeared here in the United States Court before Federal Judge McCormick in the case of Samuel Morris Wicksman (phonetic), a denaturalization proceeding.

Q. When was that, Mr. Leech?

A. I think that was in 1948.

Q. All right.

A. I subsequently appeared before the Immigration Service in a hearing for his deportation after he had been denaturalized.

(Testimony of John L. Leech.)

I testified for the Immigration Service in a deportation [344] hearing in the case of Mrs. Fanny Dell.

Q. D-e-l-l? A. D-e-l-l.

Q. When was that?

A. I think about 1925,—I mean about 1952. I am not sure.

I have appeared in more cases but that is all I can recall at the moment.

Q. Your appearance before the Un-American Activities Committee, was that in open or secret sessions?

A. That was an executive session.

Q. Executive session?

A. Yes, it was an executive session.

Q. Was that testimony ever made public to your knowledge? A. Yes, it has been published.

Q. Were there any other appearances by you before any bodies such as the Un-American Activities Committee or other congressional or legislative bodies?

A. Well, I have appeared before grand juries and I have appeared in more than one session—more than one executive session of the House Un-American Activities Committee.

Q. Were there any other court trials in which you have appeared other than those you have related? [345]

A. Not that I can recall. There may have been.

Q. You didn't testify in the Schneiderman case, did you? A. No.

(Testimony of John L. Leech.)

Mr. Brock: I would like to request of the court at this time, in order to prepare for adequate cross examination, that the transcripts of the proceedings before the Immigration Service be made available to us for the purpose of studying the testimony heretofore given by the witness in reference to the activities, aims and purposes of the Communist Party so that we may prepare ourselves to cross examine the witness.

The Court: I don't know how I can order that, counsel.

Mr. Brock: I am sure your Honor can. There is no other way we can get it. In fact under their rules, if I might point this out, under their rules even the copies that they furnish counsel we are not permitted to use.

It seems to me the Government cannot very fairly here stand and say "This is the left hand and this is the right."

This is still an agency of the Government and here is testimony which may or may not be of value and we have no way to tell unless we see it.

Mr. Dooley: May I answer that? None of the testimony that he has referred to has indicated in any way that it refers to the Diamonds this morning.

The Court: He has testified more than just the Diamonds. [346] He has testified as to the general proposition.

Mr. Brock: That is true. And obviously the

(Testimony of John L. Leech.)

Communist Party didn't have one policy for the Diamonds and another policy for some other people.

Mr. Dooley: Now, No. 1, for proper impeachment, unless the witness has testified with respect to the defendants in the case, it would lead to innumerable collateral matters to turn over all of the files of the Immigration Service merely because the defendants think that something was said concerning the aims and objectives of the Communist Party when none of it relates to the defendants, and the witness has given his testimony——

The Court: I understand what he is asking for is a transcript of the testimony, is that not correct?

Mr. Brock: That is right.

Mr. Dooley: That is right, and it would be improper for purposes of impeachment under any circumstances.

Mr. Brock: I may or may not. We can't tell until we see it and we can't see it unless we get to look at it.

If it is not pertinent then all right we would abandon that altogether.

Mr. Dooley: If it related to the Diamonds I can see some merit in the request, and if there was testimony in the other proceedings that he is referring to which related to the Diamonds there might be a possibility—— [347]

The Court: You are not only claiming they belonged to an organization that they did not reveal to the Immigration Service, but you are also claiming that they belonged to an organization that had for

(Testimony of John L. Leech.)

its purpose the overthrow of the Government by force and violence.

Mr. Dooley: That is true.

The Court: Now I will say this, if those transcript are available I shall make them available to them.

Mr. Dooley: Your Honor, I would like to, No. 1, I would like to refer to the Department of Justice and for that purpose I would like an extension of at least three weeks because this is unprecedented in the course of proceedings of this nature—merely because testimony concerning the aims and objectives of the Communist Party was given at some other time that they would be entitled to rifle through the files of the Immigration and Naturalization Service. I think that is entirely——

Mr. Brock: We haven't asked that. We don't care about the files of the Service. I wouldn't mind seeing them. I am not concealing that. I suspect there would be many things of great interest in them. But all we would want to see is his testimony as to what he said on prior occasions.

Mr. Dooley: The books and documents pertaining to the aims and objectives of the Communist Party have been offered in evidence. If counsel wants to cross examine this witness [348] pertaining to his knowledge of what is in the books themselves they can do it, but to have as an excuse to rifle through the files of the Immigration and Naturalization Service merely because they claim they want to attack the aims and objectives of the Communist

(Testimony of John L. Leech.)

Party is inconceivable. The aims and objectives of the Communist Party are set forth in those books. Do they wish to cross examine this witness pertaining to what is set forth in those books?

Mr. Brock: The witness hasn't based his testimony on books alone. We made the proposition early in this trial——

The Court: He based his testimony more than on these books as I understand his testimony.

Mr. Dooley: Is it their claim that he has testified in a proceeding that the Communist Party did not advocate the overthrow of the United States by force and violence?

Mr. Brock: I believe, and I have cross examined one or two similar witnesses in the past, that the records of prior testimony will reveal some glaring inconsistencies, yes. If it does not what are they worried about?

Mr. Dooley: Inconsistent with respect to what?

Mr. Brock: If I had seen it I could tell you.

Mr. Dooley: Would it be with respect to the Diamonds? If he testified concerning the Diamonds that would be one matter, but the subterfuge of saying "We want to see what he said about the aims and objectives of the Communist Party" [349] and to rifle through all the files of the Immigration Service——

The Court: He asked only for the witness' previous testimony.

Mr. Brock: If it is honest they have nothing to lose by it.

(Testimony of John L. Leech.)

The Court: We have had different rulings here in court and I don't know who is right. Some courts have required the names of the witnesses be furnished. I did not for the reason that I have already expressed.

Now, that the witnesses are known there is no harm in permitting them to do that. In other words, to prepare for cross examination of the witnesses.

Now, I don't know as I have the authority to direct the immigration authorities to produce a transcript. I will have to take that under advisement.

Mr. Gostin: We would like to advise your Honor, as counsel has mentioned, we have no other possible way of getting the transcript because they are not made available to counsel. Even counsel in a particular case before the Immigration Service are not supposed to use that other than for the particular case. We would have no other way of getting it.

The Court: I am going to take that request under advisement or submission, counsel.

Mr. Brock: Yes, sir.

The Court: I want to say it is an unusual request for [350] counsel to ask this court to furnish testimony of what this witness testified heretofore.

Mr. Brock: This, your Honor, is not an ordinary case. If this witness had testified in a number of reported lawsuits presumably we could buy the transcript or borrow them from the attorneys that have them, but these transcripts are not made public and they are not made public for the reason the

(Testimony of John L. Leech.)

Immigration Service doesn't want them to be public. They are not even public to the lawyers that try the case.

I couldn't bring a transcript in here under their rules. If I cross examine him I would have to rely on my memory because their rules forbid it.

The Court: I don't know. Maybe the Immigration Service would refuse to furnish it.

Mr. Brock: I would be willing to take the chance if your Honor orders it. It is the only way we can have fairness. I concede the transcripts may show nothing. If they show nothing and the testimony here is consistent we wouldn't be going into any collateral matters, I assure you.

We are not going to take the transcript and ask him about testimony that is consistent with what he talked about today. If there is no glaring inconsistencies no harm can be done.

Mr. Dooley: If he would ask the witness has he ever testified with regard to the Diamonds before, the defendants [351] in this case——

The Court: He has testified to more than as to the Diamonds, counsel. He has testified as to the aims and objectives of the Communist Party in this community.

As I told you before whether I make that available or not I will take under advisement——

Mr. Brock: Might we then—whether your Honor does that or not we will still have to attempt to do some research. Wouldn't it be better to defer this hearing until we d make our research?

(Testimony of John L. Leech.)

The Court: You can cover part of your cross examination at this time, counsel.

Mr. Brock: All right, your Honor. I am willing to do whichever way the court prefers. Relax, Mr. Dooley.

Q. (By Mr. Brock): Now, Mr. Leech, the only speech that you have any real true recollection of is the one you reported to his Honor on direct examination by Mr. Morris, is that not true?

A. I think that is correct.

Q. And you did, I take it, during your period in the Communist Party hear at least hundreds and possibly thousands of different speeches of one kind or another?

A. I think it would be safe to say thousands.

Q. In fact if one really looks at it that is all that was done, was a lot of talking, isn't it? [352]

A. No, I couldn't say that.

Q. You never did anything violent yourself, did you? A. Yes.

Q. What did you do, Mr. Leech?

A. I have taken part in demonstrations. I have on at least one occasion that I clearly recall along with the organized members of the Communist Party, destroyed municipal property.

Q. What property did you destroy, Mr. Leech?

A. In this particular instance it was cutting up and destroying fire hoses of the Compton, California, Fire Department.

Q. You did that?

A. I along with other people.

(Testimony of John L. Leech.)

Q. Is that the only instance you can give us?

A. That I specifically engaged in except for strongarm tactics, bulling our way or my way in company with other people through police lines or something of that kind, yes.

The Court: Did either one of the Diamonds in any way participate in any of those demonstrations?

The Witness: Not that I can recall, sir.

Q. (By Mr. Brock): Now, the thing you remember about this speech of Mr. Morris is that he said that conflict between the classes was inevitable, isn't that true? A. Substantially correct. [353]

Q. And that you understood to mean that in any society there are always conflicts between the classes of society, didn't you?

A. Well, I know that to be true, however, in this instance that is not what I understood or believed.

Q. That is what he said?

A. No, I don't think that I said that is what he he said. He said that in part and I think I testified before this court—forgive me—that he extended and went on and said what had to be done about it.

Q. He told you that the ruling class would not give "us anything by legal means"? A. Yes.

Q. Would not give you their power, didn't he?

A. Yes.

Q. And you understood that to mean that the ruling class would use illegal means to retain power, didn't you?

(Testimony of John L. Leech.)

A. No, I didn't mean—understand it to mean that they would use illegal means. I did understand it to mean that they would use their power to resist giving up their power.

Q. Now, the secrecy that you have talked about within the Communist Party, that was for the period in which the police acting through the Red Squad were trying to break up and destroy meetings, isn't that true? [354]

A. On the whole that was during that same period.

Q. And what period would you say that would cover, Mr. Leech?

A. Well, I think pretty much from 1931 to 1934 and perhaps part of 1935.

Q. And then from that period, starting with the end of this police pressure, the Communist Party operated more or less openly, did it not?

A. Well, they carried on more public activities.

Q. And there were more and more open meetings to which non-members were invited?

A. Not of the Communist Party.

Q. Isn't it true that there were a number of open meetings of the Communist Party?

A. Not during the period of which I have knowledge.

Q. Not that you know of?

A. There were many mass meetings, public meeting where people were invited which were not —which were organized, sponsored by the Communist Party but which were not Communist Party

(Testimony of John L. Leech.)

meetings. In other words, they were indoctrination meetings, but the meetings of the Communist Party itself to my knowledge were never open.

Q. Now you at least during all this period of time operated under the name of John Leech, didn't you? A. Yes, sir. [355]

Q. You didn't use a pseudonym of any type?

A. I did on my party records. That was a compulsion during that period of time.

Q. During how long a period was that a compulsion?

A. The use of a party name I believe was required up until the time I left the Communist Party.

Q. But actually as far as everybody who knew you was concerned you were John Leech?

A. Yes, sir. That had to be so in my case. I was the recognized head, the "face" as they called me of the Communist Party in this area.

Q. And wasn't that true of a great number of members of the Communist Party, that regardless of party name this was just something on the records of the party and they were actually known by their own true names?

A. Well, that is true, the purpose being, of course, that while they might be known as their own true names, they could not be positively identified on the Communist Party records as being that person because they were there by the use of an assumed or substitute name.

(Testimony of John L. Leech.)

Q. Now, you have seen these 3 by 5 cards that Mr. Kimple testified about, have you not?

A. I don't know what Mr. Kimple testified about.

Q. You did have charge of the work of the membership secretary, is that right? [356]

A. Membership secretary?

Q. Yes. She was under you, wasn't she or he?

A. Politically, yes.

Q. And did you have access to—I think you told the court the books and records you had access to because that is how—that is one of the ways you knew about the Diamonds' record?

A. Yes. I had access to them any time that I desired to see them all or in part.

Q. And didn't you know that on every membership—for every membership there was made at least a 3 by 5 white file card?

A. No, I don't know that to be a fact. I know that the system varied from time to time.

Q. And don't you know it to be a fact that on those 3 by 5 file cards and other party records there appeared in almost every instance the true name of the person?

A. In some cases that is true.

Q. So that on the Communist Party records there would ordinarily be an indication—an index to the pseudonyms the person's true name?

A. That is true only to an extent. To the other extent it is true that in many instances and during many periods that only part of the data was col-

(Testimony of John L. Leech.)

lected on one card and that sometimes data pertaining to the same person would [357] be compiled on three or four cards and kept in three or four different places.

Q. When was the first time, Mr. Leech, you had any contact with the Immigration Service subsequent to leaving the Communist Party?

A. In about August of 1937.

Q. At that point you went to the Immigration Service? A. No.

Q. They contacted you? A. Yes.

Q. Did you discuss with them your activities as a Communist?

A. No. They knew that I was a Communist or an ex-Communist at that time.

Q. Did you discuss anything with them at all?

A. Yes.

Q. What did you discuss with them?

A. Most pleasantly. Information that they were interested in concerning Harry Bridges.

Q. Did you discuss with them any other matters connected with your Communist Party activities?

A. I may have in a general way. I do not believe at that time that I discussed any other persons.

Q. You are not sure of that?

A. No, I am not sure. [358]

Q. Did you discuss with them at any time generally, political orientation and other activities of the Communist Party?

(Testimony of John L. Leech.)

A. I don't believe that I did at that time to any extent.

Q. When was the first time you discussed with them—with any official of the Immigration Service the general political aims and objectives of the Communist Party during your membership.

A. In any detail at all I would say in about September of the same year, 1937.

Q. And also there was a conversation in August with reference to the Bridges case and one in September of the same year with reference to other matters?

A. As it pertaining to the Bridges case and my knowledge of Communism as it concerned Harry Bridges.

Q. So in September of 1937 you had a general discussion with officials of the Immigration Service relating to the aims, objectives and characteristics of the Communist Party, did you?

A. Well, of course, I don't know, sir, what you consider a general discussion.

I recall that in about September of 1937 I was questioned by the Immigration Service, by the Attorney General's office, I believe, concerning my knowledge of Harry Bridges and the [359] aims and policies of the Communist Party.

It is a very complicated matter and I do not believe that I had what would be called a general discussion.

Q. I would concede it is a complicated matter.

(Testimony of John L. Leech.)

Mr. Leech. You didn't tell them anything at that time about the I.W.O., did you?

A. No, I don't believe I did.

Q. Did you at any time?

A. Yes. You mean the Immigration Service?

Q. Yes. A. Yes.

Q. When did you tell them?

Mr. Dooley: Object to it on the ground it is irrelevant. The court indicated this morning that such discussion of the I.W.O. was irrelevant and consequently the cross examination on the I.W.O. is also irrelevant.

Mr Brock: This is a preliminary and very limited question. I am not planning to pursue this. I just want to get one point established here and it will only take a second.

The Court: You may proceed.

Q. (By Mr. Brock): When was the first time, Mr. Leech, you discussed with the officials of the Immigration Service the I.W.O.?

A. Immigration Service?

Q. Yes. [360]

A. Outside of perhaps identifying the I.W.O. as a Communist controlled organization——

Q When did you do that?

A. Which would have been in or about 1937 or 1938. I don't believe that I discussed the I.W.O. with the Immigration Service.

Q. But in 1937 or 1938 you did inform them that it was a Communist organization?

A. I may have.

(Testimony of John L. Leech.)

Q. Didn't I understand you just now to say you did?

A. I remember that I testified during the course of the Harry Bridges deportation hearing concerning organizations, mass organizations that were controlled and under the domination of the Communist Party and the I.W.O. was one of those.

Q. The policy of the Communist Party during the period you were a member was to operate as openly as possible at all times, was it not?

A. No, I would not say that was true.

The Policy of the Communist Party was to operate as secretly and efficiently as possible, but it was also their policy too, through the use of functionaries and other people to spread their policies and information to the general public.

Q. Now it is the fact, Mr. Leech, that throughout all the time you were a member of the Communist Party, the Communist [361] Party was on the ballot, was it not?

A. I believe all during that time.

Q. And that during all of that time in almost every election, if not every election, they ran publicly Communist candidates for office?

A. Correct.

Q. And the party members, even down to the rank and file members, got out and plugged and tried to get votes for those candidates?

A. Right.

Mr. Brock: May I have from the clerk the de-

(Testimony of John L. Leech.)

fendants' exhibits for identification to show to this witness?

This court is going to have a better library when we get through than anybody else in town, I guess.

Q. (By Mr. Brock): Mr. Leech, I show you a book that bears the title "Lenin's Selected Works." Would you look at that and see if it appears to you to be one of the books that was distributed and used during the period of your membership?

A. Yes. I note on the fly leaf it says it is Volume 4 of the Selected Works of Lenin.

It contains as I ran down over the list, a number of topics that I have read and studied.

Q. And the members generally were encouraged to read and discuss the whole library of literature that you would commonly call "Marxism and Leninism literature"? [362]

A. Generally speaking, yes.

Mr. Brock: May I offer this or would your Honor rather have them offered sometime later.

The Court: Let us wait until we get everything in.

Mr. Gostin: Would you please mention the exhibit number on that?

Mr. Brock: That is my fault. This appears to be Exhibit B for identification.

The Court: When you get all the evidence in on both sides you are going to have a number of things to offer in evidence.

Mr. Brock: All right.

(Testimony of John L. Leech.)

The Court: I know the Government has a number of matters that they are going to offer and I assume you will do the same thing.

Mr. Brock: I imagine we will, your Honor.

Q. (By Mr. Brock): I show you now Defendant's Exhibit C for identification which bears what looks to me like a picture of Stalin on its face and it says "From Socialism to Communism in the Soviet Union." Was that one of the pamphlets you were encouraged to read?

A. I can't recall this pamphlet at the moment.

Q. Would looking at it help you any, Mr. Leech?

A. Well, yes. I have a very good reason why I can't recall it. I see it was a speech delivered some two years [363] after I left the Communist Party.

Q. That is a very sound reason I would say. I had better check the next one.

This is Exhibit D for identification, "The Right of Nations to Self-Determination" by Lenin, which I take it was published before you left the party. Mr. Leech, do you recognize that as one of the books you were encouraged to read?

A. I can't say that I remember that title, sir.

Q. And here is a booklet which purports to be published in 1936, Defendants' Exhibit E for identification by George Dimitroff entitled "United Front Against Fascism." Was that one of the pamphlets that you are familiar with?

A. Yes; I have studied this book. It has not always been in this form and this book represents the

(Testimony of John L. Leech.)

Communist interpretation of some of the first struggles the Communists had against Fascism, modern Fascism at least.

Q. In other words, you did understand that these different books were written at different times and had reference to different conditions?

A. Yes.

Q. Now, I show you the Defendants' Exhibit F for identification, entitled "History of the Communist Party of the Soviet Union, Short Course." Have you seen that book or a facsimile thereof?

A. This book I am now looking at—this book, this [364] particular work I believe was first copyrighted in about 1938. However, in the winter of 1935-36 while learning or studying under a Communist functionary here in Los Angeles we used this identical work—"The History of the Communist Party of the Soviet Union" as a textbook. However, at that time it is my best recollection that the book had not been copyrighted and had not been widely circulated.

Q. But it was one of the recognized text materials that you and other party members studied and read?

A. My recollection is that this particular instructor that I had was a member of the Comintern of the Communist Internationale and was one of the leading Communists of Germany at that time and it was new material.

Q. Now, I show you Defendants' Exhibit A for

(Testimony of John L. Leech.)

identification, a little volume called "Capital." You have seen that before?

A. I have seen that before. I don't remember this particular jacket on this volume. I assume this is Karl Marx's Das Capital and I tell you frankly I am too dumb to thoroughly understand it although I have read it.

Q. I will join in that. However, the fact is it was used as text material?

A. Only in the higher echelons of the party, although the other pamphlets and books by Stalin and even by the theoreticians in the Communist Party in the United States [365] were somewhat—the material was drawn to some extent from Capital.

Q. And it was a source book to be used to settle disputes and to decide on theory and so forth, was it not?

A. Again I say in the higher echelons of the party. It was not an organ for the rank and file.

Q. There was different literature generally distributed among the rank and file, was there not, from what would be distributed among the tacticians, the top leadership?

A. Well in a degree, yes. "The Selected Works of Lenin, The Historical Works" or so-called "Historical Works of Stalin" were required reading by all party membership. However, the assimilation was not always everything that was to be desired.

Q. All people didn't assimilate it equally?

A. Didn't assimilate it equally, no.

(Testimony of John L. Leech.)

Q. And all people didn't assimilate quite the same ideas from it?

A. Well, if they didn't they didn't stay in the Communist Party very long.

Q. It would be a safe suggestion that any publication—this was published after you left, but any publication under the name of "Mr. Browder" would be a pretty official publication, wouldn't it?

A. Well, no. [366]

Q. Wasn't he the head?

A. He was the secretary—excuse me, sir, he was the secretary general of the Communist Party of the United States during the time that I was active, but he also had—he also had the responsibility at that time of popularizing the Communist slogan: "Communism is Twentieth Century Americanism" and therefore he wrote much trivia along with theoretical material he wrote for the party.

Q. This was written to be read, I take it?

A. Yes.

The Court: When people write a book don't they write it to be read?

Mr. Brock: I think so. I sometimes wonder whether when I read law books, whether they are to be read or not but I assume so.

Q. (By Mr. Brock): Now, you were not one of those that made an extensive or intensive study then of the works as abstruse as Capital, were you?

A. Well, within my—within my capacity I did.

Q. Excuse me, go ahead.

A. I believe that insofar as within my capacity

(Testimony of John L. Leech.)

and it seemed generally satisfactory, the development seemed generally satisfactory to my superiors during that period of time.

The Court: We will take our afternoon recess of five minutes at this time, but I would like to ask this witness a few questions.

When you joined the Communist Party did you join it in good faith?

The Witness: Yes, sir.

The Court: You were not there as an undercover man of any kind?

The Witness: I was not, sir.

The Court: And during the whole time up until the time you left the party you were there in good faith as a member?

The Witness: In good faith in every respect, your Honor, except for about the last year when I knew I was misplaced—that it was the wrong place for me.

By that time I had a large family. I knew that I would be attacked and ridiculed and called names when I did break, so I stayed for about a year after I knew that it was not the place for me. But there were no connections of any kind outside.

Mr. Brock: We will have just a few more questions. I don't think it will take more than five minutes.

The Court: All right. We will take a short recess.

(Short recess.)

The Court: You may proceed.

Mr. Brock: In view of the court's permission

that we may have another opportunity to cross [368] examine after further study, I don't think I can develop anything further at this moment and I will stop my cross examination here.

Mr. Gostin: And the same would hold true for me, your Honor. I would like to defer my cross examination until we have had an opportunity to attempt to get the transcripts.

The Court: I told you we would defer the cross examination, but there is still the question of qualifying as experts.

Mr. Gostin: I could go into that topic but I believe the witness has testified on direct that he is familiar with most of the documents and has read them and that was probably the extent of all I would do on voir dire anyway, so I think that has been covered as far as that part is concerned.

Mr. Dooley: Your Honor, I expected they would use another five minutes. Our next witness be here in about five minutes.

Mr. Brock: I am sorry, Mr. Dooley.

The Court: What is the nature of the other testimony that you have, counsel?

Mr. Dooley: It is membership, your Honor.

The Court: Is it cumulative?

Mr. Dooley: No, your Honor.

The Court: Is it a long witness?

Mr. Dooley: No, your Honor, very short.

The Court: Well, this witness may be excused for the present. [369]

Mr. Brock: Yes, your Honor.

Mr. Gostin: Yes.

The Court: I might say this. Counsel realizes I cannot pass with any degree of certainty on some of the issues in this case until the Supreme Court passes upon the case they have before them, and if they rule a certain way we will have to continue the case and if they rule another way we will have to do all of this over again.

Mr. Brock: That is perfectly satisfactory as far as we are concerned.

Mr. Gostin: That is understood.

Mr. Dooley: Yes, your Honor.

The Court: I think we might as well take a recess until the witness appears.

Mr. Dooley: Yes. He will be here in about five minutes.

The Court: Very well, we will recess until your witness appears.

(Short recess.)

The Court: You may proceed.

Mr. Dooley: The plaintiff calls as its next witness Mr. Nicholas Kudosh.

NICHOLAS KUDOSH

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your full name. [370]

Mr. Dooley: You Honor, I would like to say in connection with this witness he doesn't speak English very well.

The Court: Do you understand the oath?

The Witness: (No answer.)

(Testimony of Nicholas Kudosh.)

The Court: Do you understand you are under oath to tell the truth?

The Witness: Yes.

Mr. Gostin: Your Honor, I would like to make the same objection previously made to other witnesses whose names were not furnished to us on the ground that their names were not supplied.

The Court: I will treat this witness the same as I have the others, counsel.

Mr. Brock: Yes.

Direct Examination

Q. (By Mr. Dooley): Where do you live, Mr. Kudosh?

A. 515 South Fickett Street.

Q. And what is your business or profession?

A. I am retired.

The Court: What was your business? What did you do before you retired? What work did you do before you retired?

The Witness: I been working as janitor.

The Court: Janitor.

The Witness: At Second and Broadway. [371]

Q. (By Mr. Dooley): Were you ever a member of the Communist Party, Mr. Kudosh?

A. Yes.

Q. In what city? A. Early 1942.

The Court: Were you a member in Los Angeles?

The Witness: Yes, Los Angeles.

Mr. Brock: There is no objection to Mr. Dooley asking leading questions as far as I am concerned.

(Testimony of Nicholas Kudosh.)

Q. (By Mr. Dooley): When did you join the Communist Party?

A. In 1942, early part of 1942.

Q. And why did you join the Communist Party?

Mr. Brock: To which I will object as being irrelevant.

The Witness: I joined first downtown.

Q. (By Mr. Dooley): Did you join the Communist Party at the suggestion of the Federal Bureau of Investigation? A. Yes.

Q. How long did you remain a member of the Communist Party?

A. I remained from 1942 to the—at the end of 1948.

Q. While in the Communist Party to what branches of the party did you belong?

A. First I belonged downtown branch on Spring Street.

Q. Did you belong to any other branches? [372]

A. Yes. Then I been transferred to Brooklyn branch.

Q. And where was the Brooklyn branch?

The Court: Brooklyn Avenue?

The Witness: Brooklyn Avenue close to me on that street.

Q. (By Mr. Dooley): Did you belong to any other branch?

A. Then I have been transferred to Hollenbeck branch.

Q. And where was the Hollenbeck branch?

A. On Brooklyn at Cummings Street.

Q. Now, during what period of time were you

(Testimony of Nicholas Kudosh.)

in the downtown branch? A. Early 1942.

The Court: When did you go to the Brooklyn branch? When did you transfer to the Brooklyn branch?

The Witness: Early 1943.

The Court: When did you transfer to the branch at Brooklyn and Hollenbeck—the Brooklyn and Hollenbeck branch?

The Witness: In 1943.

The Court: Both in the same year or were both branches the same?

The Witness: No, no. Early 1944.

Q. (By Mr. Dooley): You went to the Hollenbeck branch in 1944? A. Yes.

Q. Were the Brooklyn branch and the Hollenbeck branch the same? [373]

A. No. They have different locations. The Brooklyn branch at Mott Street and Hollenbeck branch at North Cummings Street.

Q. Do you know the defendant David Diamond?

A. Yes, sir.

Mr. Dooley: Will the clerk give the witness Exhibit 7?

(Document handed to the witness.)

Q. (By Mr. Dooley): Will you look at the picture on Exhibit 7?

A. That is David—that is David Diamond.

Q. The picture is of David Diamond?

A. Yes.

Q. Do you know the defendant Freeda Diamond? A. Yes.

(Testimony of Nicholas Kudosh.)

Mr. Dooley: Will the clerk hand the witness Exhibit 22?

(Document handed to the witness.)

The Witness: Yes, that is Freeda Diamond.

Q. (By Mr. Dooley): The picture on there is a picture of Freeda Diamond? A. Yes.

Q. Now, while you were a member of the Brooklyn branch did you ever attend any meetings of the Communist Party where both defendants, David Diamond and Freeda Diamond were present?

A. Yes. [374]

Q. And where were these meetings held?

A. At Brooklyn Avenue, at Mott Street.

Q. Now, at these meetings did they do anything to keep persons out, certain persons out?

A. Yes.

Q. What did they do?

A. They asked for membership, for Communist membership card.

Q. Was anything else done?

A. Or some credentials that he belonged to the Communist Party.

Q. And if he didn't have the credentials what did they do?

A. They keep a doorman if somebody present not a Communist Party card he turned him back—not allow him to be in the meeting.

Q. Now, while you were a member of the Hollenbeck branch of the Communist Party did you ever attend any meetings at which both the defend-

(Testimony of Nicholas Kudosh.)

ants, David Diamond and Freeda Diamond, were present? A. Yes.

Q. And where were these meetings held?

A. On Brooklyn Avenue at North Cummings Street.

Q. And at these meetings did they do anything to keep certain persons out? [375]

A. The same thing. They keep a doorman. If somebody not present Communist Party card or credential he is turned back.

Q. Now, did you ever see the defendant David Diamond pay dues to the Communist Party of the United States? A. Yes.

Q. Where?

A. One time when I come on a meeting on Brooklyn Avenue and Cummings Street hall, I found David and Freeda Diamond already there. They was paying—David was paying dues.

Q. Who else was in the hall when you got there?

A. Financial secretary.

Q. Was there anyone else?

A. Took money from him, took dues from him.

Q. Was there anyone else in the hall?

A. (No answer.)

The Court: Who else was there?

The Witness: Nobody, nobody only I was. The financial secretary and Freeda and Dave Diamond.

Q. (By Mr. Dooley): And where was David Diamond when you came into the place?

A. When I came in the hall David Diamond was paying dues.

(Testimony of Nicholas Kudosh.)

Q. Where?

A. At the secretary's table. [376]

Q. Where was Freeda Diamond when you came into the place?

A. Freeda Diamond was sitting on a bench.

Q. What happened after you came in?

A. When I came in the secretary says, "You come early, too." And then he said, "Meet Mr. David Diamond and Freeda Diamond. They come early because they want to pay dues that nobody knows about that because they are not citizens yet."

Q. And after that was a meeting held there—did anyone else come?

A. Then after a while they started gathering more members after a while.

Q. Was that the same time, the same day, the same evening? A. Yes.

Mr. Dooley: No further questions, your Honor.

Mr. Brock: I will let Mr. Gostin cross examine for both of us. I think it will be very short.

The Court: I hope so.

Mr. Brock: It will be.

Mr. Gostin: I think so, your Honor. I didn't understand too many of the answers.

Cross Examination

Q. (By Mr. Gostin): Mr. Kudosh, did I understand you to say that the [377] FBI asked you to join the Communist Party? A. Yes.

Q. When was this?

A. About at the end of 1940.

(Testimony of Nicholas Kudosh.)

Q. At the end of 1940? A. Yes.

Q. And when did you actually join the Communist Party?

A. Actually joined the Communist Party early in 1942.

Q. Now, did the FBI agent who spoke to you say that he would pay you some money for joining the Communist Party?

A. I didn't understand you.

The Court: Were you paid by the FBI? Did you receive any money from the FBI for joining?

The Witness: Pay money to me?

The Court: Were you paid any money by the FBI?

The Witness: All they pay some expenses like streetcar.

Q. (By Mr. Gostin): Is that all they paid you, just streetcar expense? A. Yes.

Q. And during the time that you were a member of the Communist Party you never got anything else except streetcar fare?

A. Oh, then they increase it sometimes.

Q. What did they increase it to, how much?

A. Oh, about $15. [378]

Q. $15 a day or a week? A. No, a month.

Q. You got about $15 a month from the FBI?

A. Yes.

Q. That was to cover your expenses?

A. Yes.

Q. Did you ever get any more money than that from the FBI?

(Testimony of Nicholas Kudosh.)

A. Or sometimes if I bring literature, I spend for literature and I charge for that my expenses, too.

The Court: I didn't understand the answer. Did you understand it?

Mr. Brock: Yes, your Honor.

Mr. Gostin: I think he said sometimes "If I paid for literature I got paid back" or something to that effect.

Mr. Brock: That was the gist of it.

Q. (By Mr. Gostin): Did you pay dues to the Communist Party? A. Yes.

Q. Did they pay you the money for that?

A. I paid dues.

Q. Did the FBI give you that money back?

A. No.

Q. Did you ever testify in a court case before?

A. (No answer.) [379]

Q. Have you ever testified as a witness before in a case? A. Against who?

The Court: Against anybody. Did you ever testify about joining the Communist Party? Did you ever testify before in a case?

The Witness: No, this is the first time.

Q. (By Mr. Gostin): Now, when the FBI man asked you fo join the Communist Party did he ask you to give him any information?

A. Yes, naturally.

Q. Did you turn in such information to the FBI? A. Yes.

Q. How often?

(Testimony of Nicholas Kudosh.)

A. Well, I think this is my business.

The Court: How often did you make a report to the FBI?

The Witness: Twice a month.

Q. (By Mr. Gostin): Did you do it in person or do it in writing?

A. Well, this is secret affairs. I don't tell. I don't have to tell.

The Court: You will have to tell whether you did it in writing or whether you told them.

The Witness: Never in writing.

The Court: Never in writing? [380]

The Witness: No.

Q. (By Mr. Gostin): Now, I think you said you were present at meetings of the Brooklyn branch when the Diamonds were also present. Is that what you said before?

A. (No answer.)

Q. Did you hear me?

A. I didn't catch the question.

Q. Do you want to try reading it, Mr. Reporter?

(Question read.)

The Court: Just a moment. You testified before you were there when the Diamonds were there at the meeting.

The Witness: (No answer.)

The Court: You testified you saw them paying dues.

The Witness: You mean——

The Court: At the meeting.

The Witness: Did I testify before?

(Testimony of Nicholas Kudosh.)

The Court: No. Here just a few moments ago you testified that you were at a meeting where they were.

The Witness: Yes.

Q. (Mr. Gostin): At the Brooklyn branch?

A. Yes.

Q. When was this meeting, what year?

A. I don't remember exactly the date. It was in 1943 but I don't remember exactly the month or date.

Q. About how many people were at that meeting? [381]

A. Oh, there was many meetings. Sometimes more and sometimes less people.

The Court: How many at the meetings would there generally be—five, ten, 15 or 20?

The Witness: Approximately from 30, sometimes 100 and sometimes over 100.

Q. (By Mr. Gostin): How many of those people can you remember now?

A. (No answer.)

The Court: I might ask this question. Can you remember anybody besides the Diamonds?

The Witness: I remember him.

The Court: Who do you remember?

Mr. Gostin: I don't care for the names necessarily, just the number. I would like him to indicate the number.

The Court: He said "many." I don't know what he means by that.

Mr. Gostin: Neither do I.

(Testimony of Nicholas Kudosh.)

The Court: Do you remember 10 or 15 of them?

The Witness: I remember 100 or 300.

Q. (By Mr. Gostin): Can you remember the names of 100 or 300 of them right now?

A. Sure.

Q. Who attended the meetings at the Brooklyn branch? A. Sure. [382]

Q. If I gave you the time and asked you to write them down on a slip of paper could you do that? A. (No answer.)

The Court: Could you tell us the names if you were asked?

The Witness: (No answer.)

The Court: I don't know whether he can write.

Mr. Gostin: We should have established that first.

Mr. Dooley: Ask him. I think he can.

Q. (By Mr. Gostin): Can you write English?

A. Yes.

Q. If I gave you all the time you needed, say right after we adjourn court today, could you sit down and write the names of the 300 people you said you saw attend the meetings at the Brooklyn branch?

Mr. Dooley: I don't think he understands.

Q. (By Mr. Gostin): Did you understand my question?

The Court: How many names could you write down?

The Witness: Maybe some one I forget the spelling.

(Testimony of Nicholas Kudosh.)

The Court: But how many could you write down if you could spell them? How many could you tell us about besides the Diamonds?

The Witness: Oh, I can write about 25.

Q. (By Mr. Gostin): Now, you mentioned there was one particular meeting where the Diamonds paid dues. A. Yes. [383]

Q. Where was that meeting?

A. Somewhere in 19——

The Court: He didn't say when. He said where.

The Witness: 1944.

The Court: Where was the meeting held at that time?

The Witness: At the Brooklyn branch—no, no, Hollenbeck branch.

Q. (By Mr. Gostin): And did I understand you to say the year was 1944? A. Yes.

Q. Do you recall the date any more specifically than that, whether it was the beginning part of the year, the middle part of the year or the end of the year? A. (No answer.)

The Court: Do you remember what month?

The Witness: Maybe early in 1944.

Q. (By Mr. Gostin): Do you recall how early? Was it in January, February or March?

A. Around from January—about February 15, maybe.

Q. About February 15?

A. (No answer.)

Q. And if I understood you before you said you heard the Diamonds say they came early to

(Testimony of Nicholas Kudosh.)

this meeting to pay their dues? A. Yes. [384]

Q. When did you get to this meeting?

A. What street?

Q. What time. A. The hour?

Q. Yes, time of day. What time did you get to the meeting?

A. Usually they start meetings at 8:00 o'clock.

Q. Were the Diamonds there when you got there?

A. I be earlier than anybody and they was over there.

Q. What I am trying to get at——

A. Before 8:00 o'clock I was there.

Q. You were there before 8:00? A. Yes.

Q. Were the Diamonds also there before 8:00?

A. Yes, sir.

Q. Who came there first, you or the Diamonds?

A. When I came I find them there.

Q. They were already there? A. Yes.

Q. And when you came in what were they doing? A. They pay dues.

Q. What did you see them do? A. What?

Q. What did you see them do?

A. Because they hold — he hold Communist [385] Party card and pay dues. Have to present Communist Party card.

Q. And did you see Mr. Diamond with a Communist Party card in his hand? A. Yes.

Q. And did you see anything else?

A. (No answer.)

The Court: Did you see him pay any money?

(Testimony of Nicholas Kudosh.)

The Witness: They pay money.

Q. (By Mr. Gostin): Did you see it?

A. Yes.

Q. Did you see him hand over some money?

A. Yes, sir.

Q. How much money was it—change or dollars or what?

A. I don't know. I was far away.

Q. How far away were you?

A. (No answer.)

Q. Were you as far away as you are from me now? A. Just a little short.

Q. A little shorter? A. Yes, sir.

Q. About this far? A. Yes.

Mr. Gostin: May we stipulate this is about 20 feet, 15 or 20 feet I would estimate.

Mr. Dooley: That seems to be about it. [386]

Mr. Gostin: Thank you.

Q. (By Mr. Gostin): And did you hear either one of the Diamonds say anything?

A. Diamonds say nothing but secretary explain that they come early because they are afraid to see anybody when they pay dues.

Q. The secretary said this? A. Yes.

Q. And not the Diamonds? A. Yes.

Q. Who did the secretary say this to?

A. (No answer.)

Q. Who was the secretary talking to?

A. The secretary she take dues.

The Court: Who did he say that to?

The Witness: She says it.

(Testimony of Nicholas Kudosh.)

The Court: What?

The Witness: She said Diamonds come early because they are not citizens and they don't like to see anybody when they pay dues.

Q. (By Mr. Gostin): Well, did the secretary tell this to you? Was she talking to you?

A. Yes.

Q. Who else was in the room at the same time?

A. Just the secretary and Diamonds. [387]

The Court: You were there, too, weren't you?

The Witness: Yes.

Q. (By Mr. Gostin): That is what we are trying to find out, your Honor. And were the Diamonds standing next to the secretary?

A. When I came in they already was standing at the secretary table and they are ready to pay dues when I came in and the secretary introduced me with them and say, "Meet Mr. Diamond and his wife, Freeda."

So we shake hands and I go sit down and as I told you before—and I sit and as I told you before—and I sit there and watch them and they pay dues and come to me and sit down with me.

Mr. Gostin: I think that is all, your Honor.

Mr. Dooley: I have one or two questions.

Redirect Examination

Q. (By Mr. Dooley): How many meetings did you attend with the Diamonds at the Brooklyn branch?

A. As I remember about 10 times.

(Testimony of Nicholas Kudosh.)

Q. And how many meetings did you attend with the Diamonds at the Hollenbeck branch?

A. Three times.

Q. Now, when you were in the Brooklyn branch did you know the Diamonds' full name? [388]

A. No. They mentioned only the first name, Freeda and Dave, but they never mentioned second name.

Q. When did you learn the Diamonds' full name?

A. In Hollenbeck branch that time when they pay dues and the secretary introduced them to me.

Mr. Dooley: No further questions.

Mr. Brock: We have just one or two questions.

Recross Examination

Q. (By Mr. Brock): Now, Mr. Kudosh, the meetings that you have talked about in Boyle Heights and Hollenbeck were all closed meetings, weren't they? A. (No answer.)

Q. Do you understand my question, Mr. Kudosh?

The Court: At these meetings was anybody but Communists allowed to attend the meeting?

The Witness: It is only Communist Party members allowed for that meeting—not outsiders.

Q. (By Mr. Brock): No outsiders, is that correct, no outsiders were allowed? A. No.

Q. The answer is no?

A. Communist never allow at meetings outsiders until become a member.

(Testimony of Nicholas Kudosh.)

Mr. Brock: That is all I want to know. [389]

The Court: That is all.

Mr. Dooley: The plaintiff calls as its next witness Mr. Lawrence W. Sloan.

Mr. Brock: We will stipulate Mr. Sloan is a qualified expert in the field of handwriting.

Mr. Gostin: We will join in that stipulation.

Mr. Dooley: I accept the stipulation.

LAWRENCE W. SLOAN

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

Mr. Dooley: Will the clerk please give the witness Exhibits 2, 3, 4 and 5. And let me read those off.

Exhibit 2 purports to be a Petition for Naturalization relating to David Diamond, No. 112600.

Exhibit 3 purports to be an alien registration form.

Exhibit 4 relating to David Diamond which purports to be an Application for Certificate of Arrival and preliminary form for naturalization.

Exhibit 5 which purports to be a Petition for Naturalization No. 112600, duplicate.

Exhibit 7 which purports to be a Certificate of Citizenship No. C-5850343.

Exhibit 9 which purports to be a photostatic copy of the 1933 registration card.

Exhibit 11 which purports to be a receipt for [390] Communist Party membership, book No. 59417.

(Testimony of Lawrence W. Sloan.)

And Exhibit 12, which purports to be an authenticated copy of a fingerprint chart, Los Angeles Police Department, No. LA-29885-M-1.

Will you hand those to the witness, please.

(Documents handed to the witness.)

Direct Examination

Q. (By Mr. Dooley): Mr. Sloan, will you examine Exhibits 2, 3, 4, 5, 7, 9, 11 and 12 and tell the court whether you have seen these exhibits before?

The Clerk: Did you say 12?

The Witness: I have 12 here. Yes, I have.

Q. (By Mr. Dooley): All of them, Mr. Sloan?

A. Yes.

Q. Now, have you made an examination and comparison of the handwriting on Exhibit 9 for identification with the handwriting—with the signature of David Diamond and David Dumanus which appear on Exhibits 2, 3, 4, 5 and 7?

A. Yes, I have.

Q. And have you made an examination and comparison of the signature "David Diamond" appearing on Exhibit 11 for identification, which purports to be a receipt for Communist Party membership book No. 59417 with the signature "David Diamond" appearing on Exhibits 2, 3, 4, 5 and 7?

A. Yes, I have.

Q. And have you made an examination——

The Court: Now, counsel, why waste time on

(Testimony of Lawrence W. Sloan.)

this. We know that he has examined these documents. Counsel knows that on both sides.

Mr. Brock: It is no secret. We don't expect to cross examine Mr. Sloan. I think Mr. Dooley can get to the question he wants to ask very quickly.

Mr. Dooley: I will do that, your Honor.

Q. (By Mr. Dooley): Do you have an opinion as to whether the signatures of David Diamond on Exhibit 11 and Exhibit 12 and the handwriting of David Diamond on Exhibit 9 are of the same person who wrote the signatures on Exhibits 2, 3, 4, 5 and 7? A. I do.

Q. And what is that opinion?

A. As a result of my comparison of the writing of the name "David Diamond" that appears on Exhibits 2, 3, 4, 5 and 7 and 11 and 12 with the writing that appears on Exhibit 9, I cannot give an unqualified and specific opinion. I would have to give a qualified opinion.

Q. And what is your qualified opinion?

A. It is my qualified opinion that the person responsible for the "David Diamond" writing appearing on the exhibits, excepting No. 9, is the person responsible for the longhand writing [392] that appears on Exhibit 9.

Q. Now, the qualified opinion only refers to Exhibit 9? A. That is correct.

The Court: What is 9?

Mr. Brock: 1933 book, I think. Isn't that right?

The Witness: Photostatic copy of 1933 registration card that has printing and writing on it.

(Testimony of Lawrence W. Sloan.)

Q. (By Mr. Dooley): Now, what is your opinion with respect to Exhibit 11, which purports to be a receipt for a Communist Party membership book No. 59417 and No. 12, which purports to be an authenticated copy of a fingerprint chart of the Los Angeles Police Department?

A. As a result of my comparison of the writing of the name "David Diamond" as it appears on the face of Exhibit 11 with the writing of the name "David Diamond" as it appears in the lower right-hand corner of Exhibit 12, it is my firm specific and unqualified opinion that these writings were made by the same person.

Q. And with respect to the signatures on Exhibits 2, 3, 4, 5 and 7 is it your opinion that the same person who made those on 11 and 12, made those on 2, 3, 4, 5, and 7?

A. That is correct. Where the name "David Diamond" appears on 2, 3, 4—I think there are more than one on Exhibit 4, 5 and 7, 11 and 12 it is my specific and unqualified opinion that one person is responsible for all of these writings of "David Diamond," the name "David Diamond."

Q. Now, what is the reason upon what you do base that opinion?

Mr. Brock: I submit we are not cross examining this witness. I know Mr. Sloan is an expert. There is no reason to get into the reason for his opinion.

The Court: I don't want it, counsel.

Mr. Dooley: Then no further questions along

(Testimony of Lawrence W. Sloan.)

that line. I don't know how much objection counsel will raise as far as the record goes. That is the reason I wanted to get that in.

The Court: Counsel apparently have no objection to this part of the record.

Mr. Brock: I must say this is a most refreshing and honest witness and we are happy to have him here.

Mr. Dooley: Mr. Clerk, will you give the witness Exhibit 17 which purports to be a Petition for Naturalization No. 116085—it is a Petition for Naturalization.

The Court: That is the petition by Mrs. Diamond?

Mr. Dooley: Yes, your Honor.

The Court: Why can't you ask the same questions as to Mrs. Diamond?

Mr. Dooley: I don't believe the witness has marked these particular exhibits, and the reason I wanted to give them to him—Exhibit 17 which purports to be a Petition for Naturalization [394] —I will just read them off: 18, 19, 20, 22 and 28. Will you hand those to the witness, Mr. Clerk?

(Documents handed to the witness.)

The Court: Are these all pertaining to Mrs. Diamond?

Mr. Dooley: Yes, Mrs. Diamond, your Honor. I believe the witness will recall——

Q. (By Mr. Dooley): Mr. Sloan, do you recall examining the documents, those documents relating to Freeda Diamond?

(Testimony of Lawrence W. Sloan.)

A. Yes, I do on at least two occasions. I can recognize these documents as documents I have seen on at least two previous occasions.

Q. Now, I will ask you to examine Plaintiff's Exhibit 28 for identification.

The Court: What is that? The identification for membership card?

Mr. Dooley: Yes, which is a receipt for 1938 Communist Party membership book No. 60205 and the signature "Florence Slater" which appears thereon.

Q. (By Mr. Dooley): Will you tell the court whether there are any similarities between the name "Florence Slater" on this receipt and the name "Freeda Diamond" which appears on the exhibits 17, 18, 19, 20 and 22?

Mr. Gostin: Your Honor, I have no objection to this if Mr. Dooley will change his question to ask if they were written by the same person. [395]

Q. (By Mr. Dooley): Were they written by the same person, if you are able to state?

A. I cannot give a specific and unqualified opinion to that question. It would necessarily have to be qualified.

Q. And will you give a qualified opinion?

A. Yes, I will. It is my qualified opinion that the person responsible for the writing of the name "Florence Slater" as it appears on the face of Exhibit 28, is the person responsible for the writing of the name "Freeda Diamond" as it appears on Exhibits 17, 18, 19, 20 and 22.

(Testimony of Lawrence W. Sloan.)

Mr. Dooley: Since the opinion is qualified would the court like to hear the reason?

Mr. Gostin: Yes.

Q. (By Mr. Dooley): Would you give the reason for that opinion?

A. Yes. Due to the fact I did not have on Exhibit 28 the same name or names containing exactly the letters or letter combination that I found on the other exhibits, 17, 18, 19, 20 and 22, I cannot arrive at a specific and unqualified opinion.

The reason that I am certain to a point that the writer is the same of all these names, "Freeda Diamond" and "Florence Slater," is due to the individual characteristics I did find between the same and similar letters and letter combinations. I am speaking collectively as to "Florence Slater" [396] on one and "Freeda Diamond" on the other and on at least one of the other documents I found writings which I could connect to the writing of the name "Freeda Diamond." I believe that is Exhibit 19.

The "F" is made distinctly similar throughout these exhibits.

The letter "R" is made in a distinctly similar manner.

The letter "E" I found to be similar and on occasion the writing of the letter "A".

Now, to me that is not a sufficient number of similarities, distinct similarities, individual characteristics to form a specific and unqualified opinion. Therefore, my opinion is necessarily qualified. I

(Testimony of Lawrence W. Sloan.)

feel most sure that these writings were made by one person but I can't say completely.

Mr. Dooley: Thank you. No further questions.

Mr. Brock: No cross examination.

Mr. Gostin: No cross examination.

The Court: How many more witnesses do you have?

Mr. Dooley: I have a handwriting expert, your Honor, since he has come over.

The Court: We don't want any more witnesses this afternoon. We will take a recess at this time until 10:00 o'clock tomorrow morning.

How much longer is it going to take you to finish your case? [397]

Mr. Dooley: Just the fingerprint expert and offering various documents into evidence, your Honor.

The Court: We will take a recess until 10:00 o'clock tomorrow morning.

Mr. Dooley: Your Honor, my fingerprint expert is supposed to be out of town tomorrow and I was wondering if the court could take 10 more minutes this afternoon?

The Court: All right, I will take 10 minutes.

Mr. Brock: It may not take that long.

The Court: Maybe if I order him to be present he can't go out of town tomorrow morning.

Mr. Dooley: Mr. Eisenhart, will you come forward, please?

The Court: What do you expect to prove by this witness?

Mr. Dooley: I expect to prove that the fingerprints on the Exhibit 13, which purports to be an authenticated copy of a report of arrest of the police department of Los Angeles, California, together with the fingerprint chart which bears the name "Abe Slater" are the same fingerprints as appear on authenticated copy of — wait a minute, your Honor—authenticated copy of identification sheet, Exhibit 15, which I believe bears the name "David Diamond," and Exhibit 12, which also bears either the name of "David Diamond" or Davey Dumanus."

We had no expert fingerprint handwriting testimony as to the name "Abe Slater."

The Court: This is for fingerprint purposes?

Mr. Dooley: Fingerprint purposes, yes. I am tying the name "Abe Slater" with the name "David Diamond."

Mr. Brock: We don't want to delay the trial and if it might be conceded that we are not waiving any objection as to the use of copies and to facilitate making it easier for the witness in the court, I am willing to go ahead on that basis and let him testify as to whether the fingerprints are the same, but I am not waiving any objection as to the use of what purports to be authenticated copies.

The Court: If this witness is going to testify the same why waste any time?

Mr. Brock: I don't know what else he will testify to.

The Court: I assume he is or he wouldn't be called.

Mr. Brock: I sort of assume so, too, but I assumed some things about Mr. Sloan that didn't come out quite right either.

Mr. Dooley: Will you take the stand, Mr. Eisenhart?

A. G. EISENHART

called as a witness by the plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your full name?

The Witness: A. G. Eisenhart.

Mr. Dooley: Will you stipulate to his qualifications?

Mr. Brock: Yes. [399]

Direct Examination

Q. (By Mr. Dooley): Where do you live, Mr. Eisenhart?

A. 173 Coral View, Monterey Park, California.

Mr. Dooley: Will the clerk give the witness Exhibits 12, 13 and 15 for identification.

(Documents handed to the witness.)

The Court: You have examined those before today, have you not?

The Witness: Yes, sir.

Q. (By Mr. Dooley): And are the fingerprints appearing on each of those exhibits the fingerprints of the same person?

A. Yes, they are. They were made by the same fingers on all three copies, People's Exhibits 12, 15 and 13.

Mr. Dooley: Will opposing counsel stipulate to eliminate the reasons for the opinion?

Mr. Brock: Sure. It wouldn't mean anything to

(Testimony of A. G. Eisenhart.)

me anyway and I am satisfied he is an expert.

Mr. Dooley: No further questions, your Honor.

Mr. Brock: Could I ask the witness one or two questions?

The Court: Certainly.

Cross Examination

Q. (By Mr. Brock): This is your field of specialty, fingerprinting? A. Yes, sir. [400]

Q. Are central records kept of fingerprints in the police department?

A. In the Los Angeles Police Department.

Q. Of all persons arrested? A. They are.

Q. And do they include persons arrested in other areas?

A. Only in isolated cases. Not in every instance.

Q. Do you know how long they have been keeping these records? A. Sometime before 1927.

Q. And the practice has been to send all those records to the Federal Bureau of Investigation, has it not? A. That is correct.

Q. And that has been the practice since about 1927 also?

A. That depends on the charge of the arrest.

Q. Would you be able to tell from these records you have whether those records or fingerprints were sent to the Federal Bureau of Investigation?

A. Not offhand, no.

Q. Can you tell from the nature of the charge whether they were?

A. No, I couldn't tell the policy at the time but that doesn't mean that it was done—that is, that they were sent to the FBI. [401]

Mr. Brock: Thank you, sir.

The Court: That is all?

Mr. Brock: Yes, your Honor.

Mr. Dooley: No further questions.

The Court: That is all. 10:00 o'clock tomorrow morning.

(Whereupon at 4:10 o'clock p.m. a recess was taken until 10:00 o'clock a.m. of the following day, Friday, March 2, 1956.) [402]

Friday, March 2, 1956, 10:00 a.m.

The Court: Case on trial.

The Clerk: United States of America vs. David Diamond and Freeda Diamond, consolidated, No. 17413 and 17412.

The Court: You may proceed.

Mr. Dooley: I would like the record to show the defendants are still not present in court.

The plaintiff would like to offer certain of the documents which have been identified, into evidence.

First, the plaintiff would like to offer Exhibit 8 for identification, which purports to be a 1932 Communist Party membership book No. 40219, relating to David Diamond.

The Court: Let us take them one by one. I want to know if there is any objection to the exhibits as we go along.

Mr. Dooley: Yes, your Honor.

Mr. Brock: As to that exhibit the defendant David Diamond will object on the ground it is not sufficiently identified. The only testimony as to 1932, so far as I recall, was the testimony of Mr. Leech

and he clearly said that he couldn't say of his own knowledge that the defendant was a member at that time.

Mr. Dooley: With respect to this book——

The Court: Just a moment. I am going to rule on that. That objection is overruled. It will be admitted. [406]

(The exhibit referred to, marked Plaintiff's Exhibit 8, was received in evidence.)

Mr. Dooley: Thank you, your Honor. The next exhibit is Exhibit 9 which purports to be a photostatic copy of the 1933 registration card relating to the defendant David Diamond.

The Court: It will be admitted.

(The exhibit referred to, marked Plaintiff's Exhibit 9, was received in evidence.)

Mr. Dooley: The next is Exhibit 10 for identification which purports to be a 1938 Communist Party membership book No. 59417, relating to the defendant David Diamond.

The Court: Admitted.

(The exhibit referred to, marked Plaintiff's Exhibit 10, was received in evidence.)

Mr. Dooley: The next is a receipt for Communist Party membership book No. 59417 relating to the defendant David Diamond.

Mr. Brock: No objection.

The Court: Admitted.

(The exhibit referred to, marked Plaintiff's Exhibit 11, was received in evidence.)

Mr. Dooley: The next exhibit is Exhibit 12 which purports to be an authenticated copy of fin-

gerprint charts, Los Angeles Police Department, No. 4-A-29885-M-1. [407]

Mr. Brock: I would like to make the same objection to the next four exhibits, 12, 13, 14 and 15. And I might as well make it now so it will be before the court.

The only objection on those offered items is the fact that they purport to be copies of something which has not been properly identified.

Mr. Dooley: I would like to call the court's attention——

The Court: I thought you stipulated as to it. You are not making an objection because of the fact they were copies?

Mr. Brock: My recollection that went only as to the books.

Mr. Dooley: That extended to the books. However, authenticated copies under the rules of evidence of public records are admissible.

I brought with me this morning in anticipation of such an objection the rule which——

The Court: What are those exhibits?

Mr. Brock: They are purportedly copies of an arrest record. Let me simplify it this way.

I don't want to be in the position of making a quibbling objection. I think my objection is probably well taken.

I will stipulate that if the proper authorities were called they would identify the record as being an official record and I think that will dispose of it.

The Court: I think they were only admitted for the [408] purpose of exemplars and not the fact

that they may have a record over there in the police department.

I don't think they prove anything one way or the other. That is not the issue. It doesn't present any of the issues of this case but simply as exemplars, were they not?

Mr. Brock: As exemplars I would have no objection at all.

Mr. Dooley: In addition to that you will notice Exhibit 13 particularly, which sets forth an arrest at Long Beach, California on January 16, 1932, which coincides with the testimony of Mr. Kimple concerning this meeting that was held at Long Beach, California.

Mr. Brock: I will simplify this. I will withdraw the objection to those exhibits—12, 13, 14 and 15.

The Court: Admitted.

(The exhibits referred to, marked Plaintiff's Exhibits 12, 13, 14 and 15, were received in evidence.)

Mr. Dooley: I next offer Plaintiff's Exhibit 26 which purports to be a 1937 Communist Party membership book, No. 75836, relating to the defendant Freeda Diamond.

The Court: Admitted.

(The exhibit referred to, marked Plaintiff's Exhibit 26, was received in evidence.)

Mr. Dooley: The next exhibit is Exhibit 27 for identification, which purports to be a 1938 Communist Party membership [409] book, No. 60205, relating to the defendant Freeda Diamond.

The Court: Admitted.

(The exhibit referred to, marked Plaintiff's Exhibit 27, was received in evidence.)

Mr. Dooley: The next exhibit is Exhibit 28 for identification, which purports to be a receipt for the 1938 Communist Party membership book, No. 60205, relating to the defendant Freeda Diamond.

The Court: Admitted.

(The exhibit referred to, marked Plaintiff's Exhibit 28, was received in evidence.)

Mr. Dooley: The next is Exhibit 29 for identification which purports to be a booklet entitled "Two Decades of Progress, 1939," relating to both defendants.

The Court: You mean these are the pamphlets?

Mr. Dooley: Yes, your Honor.

The Court: You have no objection to any of those, have you, gentlemen?

Mr. Gostin: I would have no objection except one possibly on that list, and that is the one the witness Leech testified to was withdrawn shortly after it was published. I think that was No. 40. I believe there was testimony to that effect yesterday and that is the only one I would have any objection to on that ground.

The Court: I will admit it. [410]

(The exhibit referred to, marked Plaintiff's Exhibit 29, was received in evidence.

Mr. Gostin: There are a few others, Mr. Dooley, that I think there was no testimony about, No. 30 for example.

Mr. Dooley: No testimony on 30 and 45 through

47. I will not offer those, 30 and 45 and 46 and 47. I will not offer them at all.

The Clerk: What are those numbers?

Mr. Dooley: No. 30, No. 45, 46 and 47. I will not offer those at all.

The Clerk: You are offering the others?

Mr. Dooley: I am offering all the remainder.

The Clerk: I will read the numbers to the reporter. The ones that he has offered are 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44.

The Court: They will be admitted.

(The exhibits referred to, marked Plaintiff's Exhibits 31, 32, 33, 34, 35, 36 37, 38, 39, 40, 41, 42, 43 and 44, were received in evidence.)

Mr. Dooley: Now, your Honor, I would like to renew the motion that was made during the first day of the trial, that the defendants be ordered to appear before the court for two — well, one main reason and that is so that the plaintiff can take advantage of Rule 43(b), Federal Rules of Civil Procedure. And if in the course of the examination under [411] that rule the defendant Freeda Diamond denies her handwriting on Exhibit 28 that she will be compelled to furnish an exemplar of her handwriting.

The plaintiff would like to examine the defendants under Rule 43(b), Federal Rules of Civil Procedure.

The Court: I am going to deny the motion, counsel, in view of the statement of counsel that they have no direct contact with the defendants so they can produce them.

And on the further ground that I do this without prejudice. I don't know what evidence the defendants are going to offer. I think that the Government in that respect, as far as signature cards are concerned, has made a prima facie case.

Mr. Dooley: Very well, your Honor. With that the plaintiff rests, your Honor.

Mr. Gostin: Your Honor, I would like also to get a few of these documents into evidence that have been discussed.

I think I have a complete list here of what we have given the clerk.

Exhibit A I believe was the copy of Capital by Karl Marx. I would like to offer that into evidence.

The Court: I think it has been sufficiently identified, counsel.

(The exhibit referred to, marked Defendants' Exhibit A, was received in evidence.)

Mr. Gostin: Exhibit B I believe was volume 6 of "Lenin's [412] Selected Works." I would like to offer that.

Mr. Dooley: No objection, your Honor.

The Court: It will be admitted.

(The exhibit referred to, marked Defendants' Exhibit B, was received in evidence.)

Mr. Gostin: Exhibit C I believe was "Stalin's Little Pamphlets" called "From Socialism to Communism."

The Court: Admitted.

(The exhibit referred to, marked Defendants' Exhibit C, was received in evidence.)

Mr. Gostin: As Exhibit D, "The Right of Nations to Self Determination."

The Court: Admitted. They have been sufficiently identified.

(The exhibit referred to, marked Defendants' Exhibit D, was received in evidence.)

Mr. Gostin: Exhibit E was Dimitroff's pamphlet "United Front Against Fascism."

The Court: Admitted.

(The exhibit referred to, marked Defendants' Exhibit E, was received in evidence.)

Mr. Gostin: And I believe Exhibit F was "History of the Communist Party U. S."

The Clerk: Of the Soviet Union.

Mr. Gostin: Of the Soviet Union, yes. [413]

The Court: Admitted.

(The exhibit referred to, marked Defendants' Exhibit F, was received in evidence.)

The Court: It is pretty hard to understand you, counsel.

Mr. Gostin: Am I speaking too low?

The Court: Not too low but I think you are running your words together.

Mr. Gostin: I am sorry. Mr. Clerk, can you tell me the last lettered exhibit we have?

The Clerk: G. Is F admitted, your Honor?

The Court: Yes.

Mr. Gostin: And Exhibit G I believe was the Browder book.

The Clerk: "People's Front."

Mr. Gostin: Yes.

The Court: Admitted.

(The exhibit referred to, marked Defendants' Exhibit G, was received in evidence.)

Mr. Gostin: There is one further document, your Honor. I suppose I can get a stipulation from Mr. Dooley on that. Unfortunately I don't have it with me. I will offer it to the court because there was evidence yesterday concerning, some testimony concerning some membership past 1940.

I would want to offer the 1940 copy of the constitution of the Communist Party of the United States. [414]

The only place I found this copy was in a pamphlet put out by the House Committee on Un-American Activities which prints in full various Communist Party documents and in there is the 1940 constitution. Although it wasn't identified by any witness I wonder if we can stipulate that I can get that from the pamphlet and put that into evidence?

Mr. Dooley: Yes, I will so stipulate.

Mr. Gostin: Thank you. With that, and if that meets your Honor's approval I will submit that to the clerk.

The Court: All right.

The Clerk: When will that be done?

Mr. Gostin: I might be able to do it today.

The Clerk: All right. I will mark that Exhibit H.

Mr. Gostin: Thank you.

Mr. Brock: May it be understood that all of the exhibits offered and all of the testimony adduced on

cross examination, whether by Mr. Gostin or myself, reflects on and refers to both of our clients.

The Court: Yes. Exhibit H is admitted.

(The exhibit referred to, marked Defendants' Exhibit H, was received in evidence.)

Mr. Brock: I am sure that is what we all meant.

The Court: Yes.

Mr. Gostin: Your Honor, at this time we would like to move that the same motion made yesterday concerning the [415] transcript of the testimony of Mr. Leech be made concerning the transcripts of the testimony of Mr. Kimple before the Immigration Service, so that while your Honor has the one motion under submission you might consider it as to both witnesses.

The Court: Counsel, I haven't come to any conclusion relative to that. That was, as I understand it, for the purpose of impeachment.

Mr. Gostin: Yes.

The Court: I don't know whether or not this court has a proper request. I am going to take it under submission.

Mr. Gostin: Your Honor indicated that——

The Court: I will say this, that if I make it available, inasmuch as you stated in court that the copies that were furnished counsel were restricted in their use, but if I make it available it will be deposited with the clerk of this court and can only be examined at the clerk's office.

Mr. Brock: That is what we would want. You see, we don't have——

The Court: It may contain many matters that are not relevant to this case.

Mr. Brock: We have no desire to take it out. But if we can see it here that will be fine.

Mr. Dooley: I don't know whether your Honor wants written authorities on this. If so the Government would like [416] to present them.

I looked up two Supreme Court decisions that deal with this matter.

The Court: I will give each of you 10 days to submit any points and authorities you may have on it.

Mr. Brock: All right. I think under the court's power of subpoena we could get them.

The Court: I don't know whether the court is under any obligation to furnish documents for the purpose for which you want to use them. That is a question in my mind.

Mr. Brock: Maybe the Government will volunteer them.

Mr. Dooley: Here is an excerpt from an opinion, if the court would like to listen to it, concerning this matter that was decided by the Fourth Circuit where I believe there was a Smith Act case and they had made demand for certain FBI reports and statements made by the various witnesses.

The court there said:

"There is nothing in the Constitution or elsewhere that permits a defendant to conduct a fishing expedition of the sort here proposed.

"The constitutional guarantees to a defendant accused of crime the right to be confronted by the

witnesses against him, is not the right to rummage through the secret files of the Government in the hope that he may possibly find something contradictory [417] of such witness.

"The same may be said with added force as to the Selective Service files where the purpose was to rummage through the confidential file of the Government in the hope of finding something that might contradict a witness as to a collateral matter."

And there is nothing to the contrary in Gordon vs. United States, 344 U. S., 414, 73 Supreme Court, 369, 97 Law. Ed. 447.

There a key witness for the Government had admitted on cross examination that he had given contradictory statements and that sentence on him had been held by the judge for several months, who advised him to tell the whole story to the probation officers even though it might involve others.

The decision was limited to the narrow cause thus presented and expressly distinguished from any broad fishing expedition among documents possessed by the Government on the chance that something impeaching might turn up.

That is what the court said with respect to the problem.

The Court: Counsel, I am still holding to my original holding. Each of you can submit authorities on that within 10 days. My only thought in the matter is this. I want to do my utmost to see that the parties have a fair trial and if I feel that it is necessary, and I have a legal right to order it,

things that are more or less confidential, that is one [418] thing, but I am not going to do anything that is going to deny either party what I consider a fair trial and a fair hearing.

Mr. Dooley: Yes, your Honor. You can understand that the position of the Government, however, is that it is not authorized by the rules as laid down by the Supreme Court in the Goldman case as compared with the Gordon case.

In one case the court allowed it and the other case the court did not and I think by comparing the two cases, the circumstances under which a particular statement of a witness can be allowed will be illustrated in the two cases.

The Court: Well, I would rather read your authorities and give each side an opportunity to present any authorities you have, except I would like to have both sides brief it. And when I ask for a brief that doesn't mean a book.

Mr. Gostin: We will keep it very short, your Honor.

Mr. Dooley: Yes, just the key points.

Mr. Brock: Would this suggestion meet with the court's approval? I gathered the impression that your Honor proposed to wait until the Zukor case came down before proceeding with further cross examination of Mr. Leech and possibly Mr. Kimple. I don't know that we will want Mr. Kimple back but we will let the court know.

And it occurred to me it might work out better for the court if between now and whenever we resume, the Government [419] would prepare its ex-

cerpts of material from the documents that are in and then we would follow it up with our analysis of what the Government has done and other material from the same works.

And if I might suggest I think this is something the court would take judicial notice of, but we would call it to the court's attention in the documentation. I think also an analysis of the historical conditions as to each document or statement which might be helpful and then the court would have that before we start again and I think that would make it clear.

The Court: Counsel, I expect this case to proceed to a conclusion except for the right to recall, I think, not more than two of these witnesses for cross examination. So, if the defense has any witness they expect to put on I would like to hear them.

Mr. Gostin: Your Honor, I have this thought in mind, that after cross examination possibly further cross examination of these two witnesses, we may want rebuttal witnesses. We have, of course, the court's permission to put that on. We wouldn't know until this developed out of the cross examination of these two witnesses just rebuttal, as to those witnesses.

Mr. Dooley: Your Honor, I can't conceive of rebuttal following cross examination. Generally the cross examination [420] is in. If the defendants have any evidence to contradict the direct examination of the plaintiff's case this is the time to produce that cross examination. Cross examination has

for its purpose merely to discredit the direct examination——

The Court: Not necessarily discredit it but I think sometimes it brings out a better understanding of the witness' testimony.

Mr. Dooley: Well, yes.

Mr. Gostin: That is why we request the continuance.

Mr. Dooley: Unless they would have—unless it tends to impeach I can't conceive of it.

Mr. Gostin: That is the possibility.

Mr. Brock: We may and we may not. At this time we have no witnesses. That is clear. And there is only a possibility that after further cross examination we may want to put on an impeaching witness.

The Court: Counsel, you are going to know sooner or later if these documents are made available to you. If they are not you may want to cross examine further any how.

Mr. Brock: Yes, we will, because we will have some documentation ourselves, although not nearly as complete as the Government's.

I have a lot of material on Mr. Kimple and I doubt, frankly, that I will want him back again, but I may after I have a full chance to go through it. [421]

We didn't know ahead of time whether it would be Mr. Kimple or who it would be.

The Court: I realize that.

Mr. Brock: Whatever suits the court is satisfactory with us.

The Court: Do you have any witnesses besides the possible cross examination of these two witnesses?

Mr. Brock: No, your Honor.

Mr. Gostin: No, your Honor, not at this point.

The Court: Then you rest with the exception of the cross examination?

Mr. Gostin: Yes.

The Court: And the opportunity to offer any rebuttal that you may have?

Mr. Brock: Yes, that is true.

The Court: The defendants are not going to appear as witnesses?

Mr. Brock: I don't anticipate it. I will say this, if the court please, and as I said before we don't know where they are. I think if there is a further hearing date there is no doubt they will be available and the Government can subpoena them.

The Court: As I understand the purpose of the Government was that they wanted exemplars.

Mr. Brock: I see no objection to that. [422]

The Court: And after the testimony yesterday afternoon I felt there was no necessity for them.

Mr. Brock: I don't think there is.

Mr. Gostin: We are not going to put on witnesses to rebut that testimony. And I think you are correct when you say there probably is a prima facie case.

Mr. Brock: We haven't raised any points here to quibble about.

The Court: Not any more than you can think of.

Mr. Brock: I don't agree with your Honor. I

have raised objections because we have to think in terms of a r[illegible] but we didn't examine the handwriting expe[illegible] take up time.

The Court: I realize that.

Mr. Brock: We have an obligation to our clients. We are not trying to deceive or mislead the court.

The Court: I haven't any complaint, counsel.

Mr. Brock: I don't know what good it would do Mr. Dooley to put our clients on except to harass them a little bit and I can't see any point in it. I can assure the court there is no likelihood in my mind that they would testify.

Mr. Dooley: Your Honor knows the privilege agair[illegible] self-incrimination is a personal privilege. It rests with the client and not the attorneys.

The Court: I realize that but I realize they would be testifying under advice of counsel. [423]

Mr. Gostin: Of course.

The Court: And they would be fully advised as to their rights and I think that the point you have raised, while there is some authority to support you, counsel, some good authorities as far as that is concerned, both Wigmore and McCormick support your theory as to exemplars of handwriting. However, those statements were made before the Supreme Court held that anything that is a link in a chain may be incriminating that may change the rule and inasmuch as you have now put on a handwriting expert and he has testified, I think you have made a prima facie case in that respect unless it is denied, and I don't see any occasion to cross that bridge now.

Mr. Dooley: Well, with respect to the handwriting I believe the evidence would probably stand up.

The Court: There is only one person who can deny the handwriting and that is the parties themselves. And if they denied it they would open up the question.

Mr. Gostin: Either that or another handwriting expert and we are not going to put one on.

Mr. Dooley: Well, I was thinking of the rule of clear and convincing evidence. The court is aware that the handwriting expert gave a qualified opinion as to two of the documents.

The Court: I know, counsel, but there has been much [424] corroboration as to the membership in this case without the handwriting expert, as far as that is concerned.

Mr. Brock: There is enough evidence on membership that nothing Mr. Dooley could add to it would make it any greater than it already is. He knows that, we know it and the court knows it.

Mr. Dooley: Now, with respect to the testimony in general, I am wondering whether the deposition, although I believe the court has admitted the depositions into evidence in this case——

The Court: They haven't been offered in evidence.

Mr. Dooley: Then I would like permission——

Mr. Brock: There is no objection.

Mr. Gostin: We will not object to the depositions.

Mr. Dooley: I would like to make that offer at this time.

Mr. Brock: No objection.

The Court: They will be admitted, both Mr. and Mrs. Diamond.

Mr. Dooley: Yes.

Mr. Brock: No objection.

The Court: You have no evidence at this time?

Mr. Brock: No, your Honor, we do not.

Mr. Gostin: Outside of the possible further cross examination. [425]

Mr. Brock: I think it is almost certain we will want to cross examine Mr. Leech further. I have no doubt on that.

The Court: Then there is nothing more we can do today, is there?

Mr. Brock: I think not, your Honor.

The Court: I will rule on this just as quickly as I can—that is whether or not I am going to require the Government to produce——

Mr. Brock: Prior transcripts of the testimony of Mr. Leech before the Immigration Service and Mr. Kimple.

Mr. Gostin: Both before the Immigration Service, just to make it clear. All we want is their testimony. We don't want the Government's files. We want the transcript of their testimony.

Mr. Dooley: In connection with a ruling of that nature, your Honor, the instructions of the Department require us to respectfully decline until we can communicate with the Attorney General in the event the court would order those. As the court

knows all the files of the Immigration Service are confidential and, of course, our instructions are to refer to the Attorney General himself in a situation of that nature, so I would like to request sufficient time in the event the court would rule adversely to the Government to communicate with the Attorney General to see what will occur—what action he may desire to take. [426]

The Court: Well, I am going to continue the further cross examination of the witnesses, and they are both present, aren't they?

Mr. Brock: Mr. Leech is not here. Mr. Kimple is here.

The Court: Will you have these witnesses here on Thursday, April 5?

Mr. Dooley: Yes, your Honor. For the purpose of any additional cross examination, as I understand it. You want to further cross examine whether you have the testimony before the Immigration Service or not?

Mr. Brock: Yes.

The Court: Thursday, April 5, at 10:00 o'clock.

Gentlemen, one reason there has been a conflict of rulings among our own judges here as to whether or not names of witnesses should be furnished, my research has indicated we do not have to furnish them, and while there have been rulings to the contrary, as a matter of fairness I am continuing it to that time because you do now know the names and addresses of the witnesses.

Mr. Brock: Yes, your Honor.

The Court: So if there is any error on my part

of not furnishing them before you still have an opportunity to know who they are and to further cross examine them. You have heard their testimony.

Mr. Gostin: Only this one possible difference, your [427] Honor. You have now set it forward a month where we asked for a few months before. It might be a bit too short in that I can visualize having some difficulties in getting copies of the transcripts of prior court testimony. For example, I do know Mr. Leech testified previously in court. It may take us quite some time to get a copy of the transcript. It may not be possible to do so during the period the court has allowed and the Bridges transcript is quite lengthy and it might be difficult to get it at this time.

The Court: The reason I am continuing the case is a matter of fairness.

Mr. Brock: We do appreciate that, your Honor, and I think it is fair and I would only ask this——

The Court: I still stand by my original views in the matter but I still feel that as a matter of fairness you should have an opportunity to cross examine the witnesses further if you so desire.

Mr. Gostin: I understand your Honor's original views were based on the fact that these were secret Government witnesses and should not be revealed.

The Court: I have taken that position. I felt that, as I said yesterday, that I didn't know who the witnesses were or whether they ever testified before or whether they were even known and I didn't want them to be the subject of harassment.

And I assume now that counsel will see that none [428] of these witnesses are harassed.

Mr. Brock: If any of them tells me he has ever been harassed in the past I would like to hear it. They have testified many, many times and certainly would be harassed by no one that I know. I certainly wouldn't harass them. I am too busy myself.

The Court: For instance, we had one witness here yesterday who had difficulty in speaking English. I still can't pronounce his name. He said he had been a witness in New York, did he not?

Mr. Gostin: He said this was his first trial.

The Court: First court trial?

Mr. Gostin: I gathered he meant the first trial.

The Court: I feel there is a responsibility on the part of the court to protect witnesses and prospective witnesses.

Mr. Brock: We have no intention of doing anything.

The Court: I am not intimating that counsel would but I feel the very nature of the case makes it necessary that the witnesses not be harassed.

Mr. Brock: Would this be too much to ask, your Honor. Your Honor plans to await the ruling on the Zuckman case. Now, the date of April 5, if we are to gather this data, and if we are, for instance, if your Honor decides two or three weeks from now we are to have the right to inspect certain transcripts, it is going to push us awfully hard in terms of [429] adequate preparation.

I might say it comes right in the middle of two trials I have in the Superior Court. I realize that

that is not of sufficient grounds, but I have a trial starting the 3rd and another one on the 9th.

The Court: You have too much business.

Mr. Brock: I sometimes think so. I would like to quit for about a year but I would appreciate it if the court could see its way clear to give us some more time on it.

The Court: We will cross that bridge when we come to it, counsel.

Mr. Gostin: Do I understand it is the court's position we will have this opportunity on April 5 for further cross examination?

The Court: I expect by that time for you to complete your cross examination of these witnesses.

Mr. Brock: Very well, your Honor.

Mr. Gostin: And then a decision will be made at that time what to do about the argument and submission of authorities, is that correct?

The Court: And I think we can cross that bridge when we come to it, counsel.

Mr. Gostin: I just want to get that straight. You don't want it done prior to April 5?

The Court: I don't think there would be any occasion for [430] argument before that time, before the evidence is all in.

Mr. Gostin: Very well, your Honor.

The Court: That is all we can do this morning, is it not, gentlemen?

Mr. Brock: I think so. Thank you, your Honor.

(Whereupon, at 10:35 o'clock a.m. the above-entitled matter was concluded.) [431]

Friday, May 4, 1956—10:00 A.M.

The Clerk: 17412 and 17413, United States vs. David Diamond and Freeda Diamond for further consolidated trial.

Mr. Dooley: Ready for the Government, your Honor.

Mr. Brock: Ready for the defendant David Diamond.

Mr. Gostin: Ready for the defendant Freeda Diamond.

The Court: You may proceed.

Mr. Gostin: We will rest, your Honor.

The Court: No cross examination?

Mr. Gostin: I take it your Honor has seen the Zuka case—the affirmance this week.

The Court: I just glanced through it. I don't know what it means altogether.

Mr. Gostin: It looked pretty clear to me.

The Clerk: Do you also rest?

Mr. Brock: Yes, your Honor.

The Court: Then the matter will be submitted and I will give you 30 days to brief the Supreme Court decision.

Mr. Dooley: Thank you, your Honor.

Mr. Brock: We have this situation, your Honor——

The Court: I understand there may be a motion for a rehearing on that and if that is true I don't know. Those are always a possibility. It may delay the matter somewhat.

Mr. Brock: If there is a motion for rehearing and it [433] should by chance be granted, then per-

haps we could make a motion to reopen for cross examination, but we thought we should rest at this time on what seems to be a clear decision to us. How would your Honor want it handled?

The Court: I don't want to bring these witnesses back.

I just glanced at the decision this morning. I haven't had a copy of it in my possession where I could study the opinion. I just glanced through it and apparently on the face of it it appears to favor you people, but I figured we should complete any testimony in the case at this time.

Mr. Gostin: That is satisfactory with us. We feel that the opinion, when your Honor gets a chance to examine it thoroughly, will sustain our position on that point.

The Court: I don't want you to be under any misapprehension. I am not going to call these witnesses back and have to pay them a per diem.

Mr. Gostin: We understand that, your Honor.

Mr. Brock: That is quite clear. The question I would like to ask of your Honor is this. I take it right now the only point we are really concerning ourselves with would be the effect of the Zuka case and if your Honor, for instance, should rule adversely to us you would want further briefing along the lines of the significance of the evidence and the material from the books. There is no point in doing it now.

The Court: I don't think I need anything on that. I [434] would like to know the effect of that opinion. I would like to have the benefit of it and

I would like to have the Government's side of it or their interpretation of that opinion. I think the dissenting opinion is more clear as to the affidavits and what they should contain and so forth. They seemed to avoid the word "jurisdiction" and I couldn't figure out why.

Mr. Gostin: Apparently Chief Justice Warren didn't avoid it. He used it several times in his opinion. I read it yesterday and I really didn't study it either but I believe the concluding paragraph of the majority opinion makes it quite clear it isn't a jurisdictional point.

The Court: If it is jurisdictional you know what that means.

Mr. Gostin: I think that is the question Mr. Brock has in mind. Assuming your Honor would hold that there was jurisdiction regardless of the decision of the Zuka case, I think we then would have an opportunity to either then orally argue or submit further briefs on the rest of the evidence because then it would be important to have that.

The Court: I will probably ask for an oral argument on the evidence and the facts if it should come to that. As I said before I have not studied the opinion and I am not too clear on it. I didn't have a chance to study it. I simply ran through it rather hurriedly. It seems to support [435] your position as to the law of the case.

Then as I understand it the matter is submitted?

Mr. Brock: Yes.

The Court: I will give you each 30 days to file simultaneous briefs.

Mr. Gostin: Fine, your Honor.

Mr. Dooley: Thank you.

Mr. Brock: Mr. Gostin will file for both of us. I am going to go East. If that is all right with the court I will give him my share of the fee.

Mr. Gostin: That is perfectly satisfactory. It will be a joint brief for both of us.

Mr. Dooley: Thank you, your Honor.

Mr. Brock: Thank you.

(Whereupon, at 10:05 o'clock a.m. the above-entitled matter was concluded.)

[Endorsed]: Filed Dec. 18, 1956. [436]

[Endorsed]: No. 15393. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. David Diamond, etc., and Freeda Diamond, etc., Appellees. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed: December 19, 1956.

/s/ PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for the Ninth Circuit.

In The United States Court of Appeals
For The Ninth Circuit

No. 15393

UNITED STATES OF AMERICA,
Appellant,

v.

DAVID DIAMOND, also known as DAVID DUMANUS, DAVID THORNSON, and ABE SLATER,
Appellee.

UNITED STATES OF AMERICA,
Appellant,

v.

FREEDA DIAMOND, also known as FRIEDA DIAMOND, FLORENCE SLATER, FREIDA SLATER, and FREDA SLATER,
Appellee.

APPELLANT'S STATEMENT OF POINTS ON APPEAL

The appellant Hereby Designates the following points on appeal in each of the above-entitled matters:

(1) The District Court erred in dismissing appellant's action to revoke and set aside the Order admitting appellee to citizenship and to cancel his/her Certificate of Naturalization.

(2) The District Court erred in holding that ap-

pellant's failure to file an affidavit pursuant to Section 340(a) of the Immigration and Nationality Act at the time the action was instituted was jurisdictional.

(3) The District Court erred in refusing to recognize the Affidavit filed by appellant during trial as a sufficient compliance with Section 340(a) of the Immigration and Nationality Act.

(4) The District Court erred in refusing to recognize the evidence adduced by appellant during trial as a cure of any defect which may have arisen by reason of appellant's failure to file an Affidavit at the time the action was instituted.

(5) The District Court erred in refusing to adjudicate the action upon its merits, since the entire trial had been completed and the cause taken under submission.

Dated: This 8th day of January, 1957.

LAUGHLIN E. WATERS,
United States Attorney,
MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division,
/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney,
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Jan. 9, 1957. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF RECORD TO BE PRINTED

Appellant Hereby Designates the following record to be printed in the above-entitled matter:

(1) Complaint (17412-BH).

(2) Complaint (17413-BH).

(3) Motion to Dismiss Complaint (17412-BH) through line 24 of page 1 only.

(4) Motion to Dismiss Complaint (17413-BH) through line 25 of page 1 only.

(5) Minutes of the Court, March 21, 1955 (17412-BH).

(6) Order filed May 31, 1955 (17412-BH).

(7) Order filed May 31, 1955 (17413-BH).

(8) Answer to Complaint (17412-BH).

(9) Answer to Complaint (17413-BH).

(10) Answer to Request for Admissions (17413-BH).

(11) Minutes of the Court, January 30, 1956 (17412-BH).

(12) Memorandum of Opinion (17412-BH and 17413-BH).

(13) Order Dismissing Actions, entered July 27, 1956 (17412-BH and 17413-BH).

(14) Notice of Appeal (17412-BH).

(15) Notice of Appeal (17413-BH).

(16) Appellant's Statement of Points on Appeal.

(17) Stipulation Consolidating Appeals and for Consideration of Exhibits in their Original Form.

(18) Appellant's Designation of Record to be Printed.

(19) Reporter's Transcript of Proceedings had on February 28, 1956, February 29, 1956, March 1, 2, and May 4, 1956.

Dated: January 8, 1957.

LAUGHLIN E. WATERS,
United States Attorney,
MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division,
s/ JAMES R. DOOLEY,
Assistant U. S. Attorney,
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Jan. 9, 1957. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STIPULATION CONSOLIDATING APPEALS AND FOR CONSIDERATION OF EXHIBITS IN THEIR ORIGINAL FORM

It Is Hereby Stipulated by and through the parties hereto, through their respective counsel, and subject to the approval of Court, that the above captioned appeals may be consolidated.

It Is Further Stipulated, subject to approval of Court, that the exhibits received in evidence in the above causes before the District Court may be con-

sidered in their original form by the United States Court of Appeals for the Ninth Circuit in connection with the pending appeals, and need not be printed.

Dated: This 4th day of January, 1957.

LAUGHLIN E. WATERS,
United States Attorney,

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division,

/s/ JAMES R. DOOLEY,
Assistant U. S. Attorney,
Attorneys for Appellant.

BROCK, EASTON & FLEISHMAN,
/s/ By ROBERT L. BROCK
Attorneys for Appellee, David Diamond.

/s/ IRWIN GOSTIN
Attorney for Appellee, Freeda Diamond.

It Is So Ordered:

This 14th day of January, 1957.

/s/ WM. HEALY
/s/ WALTER L. POPE
/s/ FREDERICK G. HAMLEY

[Endorsed]: Filed Jan. 15, 1957. Paul P. O'Brien, Clerk.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PETITIONER

v.

DAVID DIAMOND, also known as DAVID DUMANUS, DAVID THORNSON and ABE SLATER,

and

FREEDA DIAMOND, also known as FRIEDA DIAMOND and FLORENCE SLATER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

J. LEE RANKIN,
Solicitor General,

RUFUS D. MCLEAN,
Acting Assistant Attorney General,

BEATRICE ROSENBERG,
J. F. BISHOP,
Attorneys,
Department of Justice,
Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No.

UNITED STATES OF AMERICA, PETITIONER

v.

DAVID DIAMOND, also known as DAVID DUMANUS, DAVID THORNSON and ABE SLATER,

and

FREEDA DIAMOND, also known as FRIEDA DIAMOND and FLORENCE SLATER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit affirming the order of the United States District Court for the Southern District of California, which had dismissed the actions for denaturalization against respondents.

OPINIONS BELOW

The opinion of the Court of Appeals and the separate opinion of Judge Fee (App., *infra*, pp. 7-11)

have not yet been reported. The opinion of the District Court (R. 36-38) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 31, 1957 (App., *infra*, p. 11). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether proceedings to set aside orders of naturalization by reason of illegality and fraud must be dismissed because the affidavits of good cause—furnished to the United States Attorney at the time of the complaint, exhibited to one of counsel for respondents at the pre-trial conference, and filed during the first day of the trial—were not filed at the time of filing of the complaints.

STATUTE INVOLVED

Section 340 (a), Immigration and Nationality Act of 1952 (66 Stat. 260, 8 U.S.C. 1451 (a)):

> It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact

or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: * * *.

STATEMENT

On November 1, 1954, the government filed a complaint against each of the respondents to set aside their naturalization, alleging concealment, wilful misrepresentation and illegality in the naturalization proceedings in that respondents had falsely denied the use of certain aliases and had made misrepresentations with respect to their membership in the Communist Party and their intentions at the time of filing of the petitions for naturalization (R. 1-20).

The United States Attorney was in possession of affidavits showing good cause at the time of the filing of the complaints but, pursuant to the departmental policy of that time, the affidavits were not filed with the complaints (Stipulation, R. 124-126).

Respondents, by motions filed in March 1955, sought dismissal of the actions on the ground that the court was without jurisdiction because the complaints were not "supported" by an affidavit showing good cause (R. 20, 22). The motions were denied on March 21 and May 31, 1955, respectively, upon authority of *Schwinn* v. *United States*, 112 F. 2d 74 (C.A. 9), affirmed, 311 U.S. 616 (R. 20-23, 36).

A copy of the affidavit was shown, at the pre-trial conference, to counsel for respondent Freeda Diamond and he was advised that the affidavits would be intro-

duced at the trial as to both defendants (R. 125-126). During the first day of the trial, on February 28, 1956, the affidavits were admitted in evidence, subject to later ruling thereon upon handing down of the decision of this Court in the then pending case of *United States* v. *Zucca*, 351 U.S. 91 (R. 125-127). On July 26, 1956, subsequent to the decision in *Zucca*, *supra*, the trial judge dismissed the actions without prejudice (R. 36-39). The Court of Appeals for the Ninth Circuit affirmed (App., *infra*, pp. 7-11).

ARGUMENT

The decision below is in direct conflict with decisions of the Second Circuit to the effect that in a denaturalization suit the filing of the affidavit of good cause after the complaint does not deprive the District Court of jurisdiction to determine the issues raised by the complaint. *United States* v. *Lucchese*, 247 F. 2d 123 (C.A. 2), petition for a writ of certiorari pending, No. 450, this Term; *United States* v. *Costello*, 247 F. 2d 384, 387 (C.A. 2), petition for a writ of certiorari pending, No. 494, this Term. See also *United States* v. *Matles*, 247 F. 2d 378 (C.A. 2), petition for a writ of certiorari pending, No. 378, this Term.[1] The statement in the opinion below that the *Lucchese* and *Costello* decisions present "somewhat different" facts (App., *infra*, p. 9) does not, we submit, serve to make the conflict any less direct. The only difference is that, in both *Lucchese* and

[1] Petitioner in *Matles* has called the Court's attention to the instant decision, in a Supplemental Memorandum recently filed.

Costello, the District Court dismissed the complaints before trial so that the affidavits were filed before trial had actually begun [2] whereas, in this case, the affidavits were filed on the first day of trial, and the complaint was not dismissed until after the evidence had all been taken. However, the affidavit was in existence before the complaint was filed and was shown to an attorney for one of the respondents in a pre-trial conference. Respondents therefore had ample opportunity to present challenges, if any were available, to the showing of good cause effected by such affidavits. There is accordingly no basis for undoing all the proceedings that ensued after the pre-trial conference, *i.e.*, the taking of testimony of nine witnesses: four naturalization examiners (R. 45-172), three witnesses testifying to respondents' Communist Party activities (R. 173-385), one handwriting expert (R. 385-392), and one fingerprint expert (R. 394-396), and the introduction in evidence of 43 exhibits (Exs. 1 through 29, and 31 through 44).

The essential fact is that the decision below holds that the defect in filing the complaint without the affidavit cannot be cured in the same action, while the Second Circuit holds that the failure to file the affidavit with the complaint may be corrected. For the reasons set forth in the government's brief in opposition in *Lucchese* (No. 450, this Term), it is respectfully submitted that the view of the Second Circuit

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[2] The dismissal in *Costello* was on other grounds. On the affidavit issue, see the opinion of the District Court reported at 142 F. Supp. 290 (S.D.N.Y.).

is a correct one and that the decision below should be reversed.

CONCLUSION

For the foregoing reasons, we respectfully submit that this petition for a writ of certiorari should be granted and the decision below should be reversed.

J. LEE RANKIN,
Solicitor General.

RUFUS D. MCLEAN,
Acting Assistant Attorney General.

BEATRICE ROSENBERG,
J. F. BISHOP,
Attorneys.

FEBRUARY 1958.

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15,393

Dec. 31, 1957

UNITED STATES OF AMERICA,
Appellant,

vs.

DAVID DIAMOND, etc., and FREEDA DIAMOND, etc.,
Appellees.

Appeals from the United States District Court for the Southern District of California Central Division.

Before: STEPHENS, Chief Judge; FEE and HAMLEY, Circuit Judges

STEPHENS, Chief Judge

The United States is here appealing from dismissals of these actions for denaturalization by Judge Ben. Harrison. The sole question raised concerns Section 340(a) of the Immigration and Nationality Act of 1952, 8 U.S.C.A. 1451(a). We quote the applicable portion of the statute:

> "It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 1421 of this title . . . for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling

> the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation. . . ."

The complaints in these actions were filed on November 1, 1954, without the prior filing of an affidavit separate from the sworn to complaint. On March 1, 1955, the defendant-appellee David Diamond filed a motion to dismiss the complaint on the ground that the court lacked jurisdiction because the United States Attorney had not filed with the complaint an affidavit showing good cause. A similar motion was filed by defendant Freeda Diamond on March 25, 1955. The trial judge denied both motions relying on an opinion of this Court. *Schwinn* v. *United States*, 112 F.2d 74, affirmed 311 U.S. 616. The appellees then filed their answers; the cases were consolidated for trial; and the trial commenced on February 28, 1956. On the opening day of the trial, appellant offered affidavits of good cause in evidence, and they were accepted by the trial judge over objection by counsel for appellees. It was stipulated by the parties that the United States Attorney had these affidavits in his possession at the time the complaints were filed, and that they were shown to counsel for defendant-appellee Freeda Diamond at the pre-trial hearing, and that counsel was informed that the affidavits would be offered during the trial. Counsel for the Diamonds were given a copy of these affidavits on February 29, 1956, and the trial proceeded. At the conclusion of the government's case, the Diamonds rested, and the court took the case under submission. The court and counsel discussed the case of *United States* v. *Zucca*, 351 U.S. 91, and counsel were directed to file briefs on its effect on the doctrine of the *Schwinn* case. Finally Judge Harrison dismissed both the actions without prejudice, viewing *Zucca* as

holding that the filing of the affidavit prior to institution of action was an indispensable requirement. The Court could have done nothing else in the face of the following language (of Chief Justice Warren) in the *Zucca* opinion:

> (page 100)
> "We believe that, not only in some cases but in all cases, the District Attorney must, as a prerequisite to the initiation of such proceedings, file an affidavit showing good cause."

Chief Justice Warren also says, on page 99:

> "The mere filing of a proceeding for denaturalization results in serious consequences to a defendant. Even if his citizenship is not cancelled, his reputation is tarnished and his standing in the community damaged. Congress recognized this danger and provided that a person, once admitted to American citizenship, *should not be subject to legal proceedings to defend his citizenship without a preliminary showing of good cause.*" (Emphasis supplied.)

Since the *Zucca* decision, the requirement that an affidavit be filed has been discussed in *Nowak* v. *United States*, 6 Cir., 238 F.2d 282, certiorari granted 353 U.S. 922; *United States* v. *Lucchese*, 2 Cir., 247 F.2d 123; *United States* v. *Matles*, 2 Cir., 247 F.2d 378; *United States* v. *Costello*, 2 Cir., 247 F.2d 384. While these cases are interesting, they present facts somewhat different from those of our case, and a detailed analysis would be fruitless.

The judgment is affirmed.

FEE, Circuit Judge:

I reserve the right to file a separate opinion.

(Endorsed:) Opinion. Filed Dec. 31, 1957.
Paul P. O'Brien, Clerk.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15,393
Jan. 10, 1958

UNITED STATES OF AMERICA,
Appellant,

vs.

DAVID DIAMOND, etc., and FREEDA DIAMOND, etc.,
Appellees.

Upon Appeal from the United States District Court for the Southern District of California Central Division.

Before: STEPHENS, Chief Judge; FEE and HAMLEY, Circuit Judges

JAMES ALGER FEE, Circuit Judge, concurring in result:

The language and reasoning of the majority opinion go much too far. Insofar as it is held that introduction of the affidavits at trial does not satisfy the requirements in a denaturalization case, where rigid safeguards of the rights of the defendant are necessarily required, I agree. The dismissal without prejudice was proper. But it seems clear that the Supreme Court did not intend, in establishing such safeguards, to promulgate a technical formula which must be followed, to the letter and at all events, on peril of dismissal upon jurisdictional grounds. This panel should not attempt to bind the court in such manner that we cannot examine other procedural devices in subse-

quent cases where the defendant may have been fully protected by the filing of the affidavits.

(Endorsed:) Concurring Opinion. Filed Jan. 10, 1958.

Paul P. O'Brien, Clerk.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 15,393

UNITED STATES OF AMERICA, APPELLANT

v.

DAVID DIAMOND, etc., et al., APPELLEES

JUDGMENT

Appeals from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

(ENDORSED) Judgment
Filed and entered:
December 31, 1957
PAUL P. O'BRIEN, Clerk.

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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 771

UNITED STATES OF AMERICA, PETITIONER,

vs.

DAVID DIAMOND, also known as DAVID DUMANUS, DAVID THORNSON and ABE SLATER,

and

FREEDA DIAMOND, also known as FRIEDA DIAMOND and FLORENCE SLATER.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR DAVID DIAMOND AND FREEDA DIAMOND IN OPPOSITION.

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IN THE

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OCTOBER TERM, 1957.

No. .....

UNITED STATES OF AMERICA, PETITIONER,

vs.

DAVID DIAMOND, also known as DAVID DUMANUS, DAVID THORNSON and ABE SLATER,

and

FREEDA DIAMOND, also known as FRIEDA DIAMOND and FLORENCE SLATER.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR DAVID DIAMOND AND FREEDA DIAMOND IN OPPOSITION.

Question Presented.

Whether the introduction of affidavits of good cause into evidence, over the objections of defendants' counsel, during the course of the trial for denaturalization, was a sufficient compliance with Section 340(a) of the Immigration and Nationality Act of 1952 (66 Stat. 260, 8 U. S. C. 1451(a)) which requires the filing of an affidavit of good cause as a prerequisite to institution of denaturalization proceedings.

Statute Involved.

Section 340(a), Immigration and Nationality Act of 1952 (66 Stat. 260, 8 U. S. C. 1451(a)), provides:

> "It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of Sec. 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization. . . ."

Statement.

On November 1, 1954 the Government filed separate complaints against respondents to set aside their naturalization. No affidavits of good cause were filed prior to or with the complaints.

In March of 1955 respondents filed motions to dismiss the complaints on the ground that the court had no jurisdiction to proceed because affidavits of good cause had not been filed. The motions were denied on the authority of *Schwinn v. United States,* 112 F. 2d 74, affirmed, 311 U. S. 616. The respondents then filed their answers; the cases were consolidated for trial; and trial commenced on February 28, 1956.

On the opening day of trial petitioner offered affidavits of good cause into evidence and they were accepted by the trial judge over respondents' objection. It was then stipulated that the United States Attorney had these affidavits in his possession at the time the complaints were filed, that they were shown to counsel for one of the defendants at

one of the pretrial proceedings[1] and that counsel was informed that the affidavits would be offered into evidence during the trial. [R. 124-126.] Counsel for respondents were served copies of the affidavits on February 29, 1956, the second day of trial, and the trial proceeded.

At the conclusion of the Government's case on March 2, 1956, the trial was continued. Prior to the resumption of trial on May 4, 1956 this Court rendered its decision in *United States v. Zucca,* 351 U. S. 91; respondents rested their case without introduction of evidence, citing that decision to the trial court. On July 26, 1956, after the parties had briefed the effect of the *Zucca* case on the doctrine of the *Schwinn* case, the trial judge dismissed the within actions without prejudice. The Court of Appeals for the Ninth Circuit affirmed.

Argument.

1. Petitioner has presented to this Court no ground for granting the petition for a writ of certiorari within the meaning of Rule 19 of the Supreme Court Rules. The decision below is not in conflict with the applicable decisions of this Court, but rather is consistent with such decisions. In *United States v. Zucca, supra,* at p. 100, this Court stated that the Government must "as a prerequisite to the initiation of such proceedings, file an affidavit showing good cause". This Court further stated (at p. 99):

> "The mere filing of a proceeding for denaturalization results in serious consequences to a defendant. Even if his citizenship is not cancelled, his reputation

[1]The pretrial proceeding referred to in the record was the taking of a deposition on February 14, 1956, two weeks prior to commencement of trial.

> is tarnished and his standing in the community damaged. Congress recognized this danger and provided that a person, once admitted to American citizenship, should not be subject to legal proceedings to defend his citizenship without a preliminary showing of good cause."

Trial already had commenced when the affidavits in the instant case were filed with the trial court as exhibits and when copies were served upon counsel. Clearly, this action cannot be considered as either satisfying a procedural prerequisite to the "initiation" of an action for denaturalization or a "preliminary showing of good cause."

Petitioner further contends that the judgment below is in conflict with judgments rendered by the Court of Appeals for the Second Circuit in *United States v. Lucchese,* 247 F. 2d 123 (C. A. 2), petition for a writ of certiorari pending, No. 450, this Term; *United States v. Costello,* 247 F. 2d 384, 387 (C. A. 2), petition for a writ of certiori pending, No. 494, this Term, and *United States v. Matles,* 247 F. 2d 378 (C. A. 2), petition for a writ of certiorari pending, No. 378, this Term. In these cases the Second Circuit appears to be in conflict with the principles enunciated in the *Zucca* case since it reversed dismissals of denaturalization suits when the affidavits of good cause were not filed prior to or at the time of filing the complaint. As the Court of Appeals for the Ninth Circuit indicated in its decision below, however, a fruitful comparison cannot be made between the instant case and those cited by petitioner as they present facts somewhat different than those here. In the *Lucchese* case an affidavit of good cause was filed on November 23, 1955; trial has never even commenced in that case since the action was dismissed prior to trial for failure to file an affidavit of

good cause. In *Costello* an affidavit of good cause was filed on November 17, 1955 and trial did not commence until September 25, 1956. In *Matles,* although the complaint was filed without the affidavit of good cause, an amended complaint was later filed and, by stipulation, an affidavit of good cause was filed with the amended complaint on September 16, 1953.

Thus, the factual situation in the instant case, where no affidavit was filed until after the opening of trial, basically differs from the cases where the affidavit was filed and served long before trial began.

The mere existence of the affidavits in the possession of the United States Attorney does not satisfy the statutory requirement that the affidavit be filed as a prerequisite to maintenance of the action[2]. This Court stated at p. 100 of the *Zucca* opinion:

> "We believe that not only in some cases but in all cases the District Attorney must, as a prerequisite to the *initiation* of such proceeding, *file* an affidavit showing good cause." (Emphasis added.)

The failure to file the affidavits with the trial court to initiate the proceedings left the trial court with no alternative but to dismiss the action.

2. The question of the legal sufficiency of the affidavits, which eventually were filed with the trial court as exhibits, is not now presented to this Court by petitioner. There already has been urged upon this Court the view that an affidavit of good cause not based on personal knowledge,

---

[2]The exhibition of an affidavit to counsel for one of the respondents during a pretrial proceeding only proved that the affidavit was then in existence, a fact which was never disputed by respondents.

but upon information obtained from the records of Immigration & Naturalization Service, is insufficient to meet the requirements of the statute. *Nowak v. United States*, 238 F. 2d 282, Docket No. 72, and *Maisenberg v. United States*, 238 F. 2d 282, Docket No. 76, present this issue. Since the affidavits filed in the instant case as exhibits below were of a similar nature to those which were filed in the cited cases (R. 124-126) a decision of this Court holding such affidavits to be an insufficient compliance with the statutory requirement would of necessity moot the question sought to be presented by the instant petition.

Conclusion.

For the above reasons it is respectfully submitted that the judgment below is a correct disposition upon principles established by this Court, and the petition for a writ of certiorari, therefore, should be denied.

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BROCK, FLEISCHMAN & RYKOFF,
By ROBERT L. BROCK,
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Dated: February 27, 1958.